



TC06052

Appeal numbers: TC/2015/05780
TC/2015/05781

INCOME TAX – CORPORATION TAX – Sch 36 Notices – reasonably required – higher threshold of “reason to suspect” under para 21(6) – documents required to transfer ownership of land – meaning of failure to comply so as to incur a penalty – Sch 36 Notices partly upheld, partly set aside – penalties upheld.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**HARRYDEV LIMITED
SHIVCHARAN SINGH SANGHERA**

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE REDSTON
IAN MENZIES-CONACHER**

Sitting in public at Fox Court, Brooke Street, London on 22 and 23 June 2017

Mr Cheema of Cheema & Co for the Appellants

Mrs Rees of HM Revenue & Customs Appeals and Reviews Unit for the Respondents.

DECISION

Introduction and summary

1. Mr Sanghera is the director and shareholder of Harrydev Ltd (“Harrydev”). HM Revenue & Customs (“HMRC”) issued Mr Sanghera and Harrydev with Notices under Finance Act 2008, Sch 36, para 1 (“Sch 36 Notice” or “Notice”), requiring the provision of certain information and documents (“Items”). HMRC subsequently issued each Appellant with fixed penalties of £300 and daily penalties of £660 for failure to comply with the Notices. Mr Sanghera and Harrydev appealed against those Notices and the penalties.
2. No numbers have been given to the Items on the face of the Sch 36 Notices, but for ease of reference in this Decision we have numbered the Items in the order they are set out. There were four Items in the Sch 36 Notice issued to Harrydev, and 31 in that issued to Mr Sanghera.
3. Of the four Items in the Harrydev Notice, one was withdrawn by HMRC before the hearing, one was satisfied by the company before the hearing, and the Tribunal set aside the other two Items because the documents required did not exist. However, we upheld the penalties because:
- (1) the company had failed to respond to the Notice within the specified period, and that constituted a failure to comply, see §50ff;
 - (2) the company did not have a reasonable excuse for that failure;
 - (3) the Tribunal has no jurisdiction to reduce the fixed penalty; and
 - (4) although the Tribunal has the jurisdiction to reduce the daily penalty, we found it to be fair and proportionate, see §70.
4. Of the 31 Items in the Notice issued to Mr Sanghera, one was a statutory record and so not appealable to the Tribunal. Of the remainder:
- (1) eleven were upheld because they were reasonably required under para 1 of Sch 36;
 - (2) two were upheld because HMRC met the higher threshold set by Sch 36, para 21, Condition C, see §127ff;
 - (3) eight were set aside because the documents required do not exist;
 - (4) Mr Sanghera satisfied one Item by giving information at the hearing; he satisfied a further two Items before the hearing;
 - (5) one item was varied, see §119;
 - (6) HMRC agreed to withdraw one Item during the hearing, because it was more than six years old, and did not satisfy Sch 36, para 20; and
 - (7) HMRC withdrew the other four Items before the hearing.
5. The outcome in relation to each of the Items is summarised at Appendix 1. Mr Sanghera is directed to provide the information and documents required under all the

Items which have been upheld or varied, by one calendar month from the date of issue of this Decision. No information or document is required from Harrydev.

6. We uphold the penalties charged on Mr Sanghera for similar reasons to those set out above in relation to Harrydev.

5 **The legislation and the evidence**

7. The relevant legislation is set out as Appendix 2.

8. The Tribunal was provided with a Bundle of documents prepared by HMRC, which included:

10 (1) correspondence between the parties and between the parties and the Tribunal;

(2) Mr Sanghera's 2012-13 Self Assessment ("SA") return;

(3) various documents relating to five properties which were said to be owned by Mr Sanghera;

15 (4) court documents relating to the eviction of a tenant from a property at Nottingham Road, together with a copy of the tenancy agreement with the new tenant;

(5) various pages from the Appellants' bank accounts;

(6) a list of Harrydev's sales and purchases for the year ended 31 January 2012 and certain invoices; and

20 (7) the statutory accounts of Harrydev for the years ended 31 January 2012 and 31 January 2013, together with the related corporation tax ("CT") returns.

9. Mr Sanghera provided a witness statement, gave oral evidence led by Mr Cheema, and was cross-examined by Mrs Rees. Some of Mr Sanghera's evidence was unreliable – for example, regarding the furniture he said was held in the properties and the loan he asserted had been made to his friend, Mr Lal. However, we accepted his evidence in other respects, particularly in relation to the absence of certain documents required by the Sch 36 Notices.

30 10. Mr Cheema gave oral evidence and was cross-examined by Mrs Rees. He was for the most part a reliable witness, but we found his evidence about the accounting adjustment (see §43ff) to be entirely lacking in credibility.

11. Mr Stuart Dyson issued the Sch 36 Notices and penalties. He provided a witness statement, gave evidence-in-chief led by Mrs Rees, and was cross-examined by Mr Cheema. He was an honest and straightforward witness in all respects.

35 12. On the basis of the evidence set out above, we make the following findings of fact. We make further findings of fact later in this Decision.

Findings of fact

13. Harrydev is a company registered for VAT. Its business is the importation and retail of alcohol products. Officers from HMRC's Customs and International Trade and Excise ("CITEX") team frequently visited the company's premises to check the company's compliance with the customs and excise legislation and regulations. Harrydev also received regular visits from HMRC Officers specialising in VAT, checking whether the company had complied with its VAT obligations.

14. The CITEX and VAT Officers often asked for documentation and carried out other checks; the requested documents were provided by Mr Sanghera, the director of the company; by his wife who is the company secretary, and/or by or a member of the company's staff.

15. Harrydev's accounts for the year ended 31 January 2012 show sales of £862k and cost of sales of £833k. After administrative expenses and tax, the company's net profit was £19k. The accounts for the year ended 31 January 2013 show that turnover for that year had dropped significantly to only £70k, very slightly above the cost of sales. After administrative expenses of £8k and a tax credit of £1.5k, the company reported a net loss of £6k.

16. On 12 December 2012, Mr Dyson opened an enquiry into Harrydev's CT return for the year ended 31 January 2012. Included with that letter was an informal request for information and documents.

17. On 15 November 2013, Mr Sanghera filed his SA return for the tax year 2012-13. It showed rents received from properties but no income from Harrydev. The properties were 81, 83 and 85 Colchester Road and 5 Nottingham Road. Mr Sanghera's gross income was declared to be £27,677; after tax of £3,914, his net income was £23,763.

18. On 18 December 2013, Mr Dyson opened an enquiry into Harrydev's CT return for the year ended 31 January 2013. On the same day, he opened an enquiry into Mr Sanghera's SA return for the 2012-13 tax year. During 2014 Mr Dyson and Mr Cheema corresponded on a number of issues; Mr Dyson's correspondence was copied to Mr Sanghera.

19. In his letter dated 23 October 2014, Mr Dyson summarised 34 points on which he was seeking more information or documents from Mr Sanghera, and concluded "at this stage of my enquiry I am not satisfied that Mr Sanghera's [2012-13] tax return was an accurate reflection of all his taxable sources of income". In the same letter, he set out five points relating to Harrydev. On 15 December 2014, Mr Cheema provided two pieces of relevant information but said he considered Mr Dyson's information requests to be disproportionate and unreasonable.

20. On 6 January 2015, Mr Dyson issued both Appellants with Sch 36 Notices, and gave a deadline of 18 February 2015. The information and documents required by the Notices essentially mirror those in his letter of 23 October 2014.

21. On 23 January 2015, Mr Sanghera's father passed away. On 4 February 2015 Mr Cheema asked for a six week extension of time to comply with the Notices, because of time pressure due to self-assessment and because Mr Sanghera was "busy organising the funeral and other matters". Mr Dyson sent his condolences, and
5 allowed an extension of time until 27 March 2015.

22. On 20 March 2015, Mr Cheema wrote again, saying Mr Sanghera had not yet returned to work following his father's death, and that Harrydev was not trading; as a result he had been unable to deal with the Notices. However, he said that "all your points and more have already been dealt with" by other HMRC Officers, and named
10 nine individual Officers together with their work locations. He asked Mr Dyson to supply him with copies of the notes of meetings between those Officers and the Appellants.

23. On 1 April 2015 Mr Dyson issued each Appellant with a fixed penalty notice of £300. On 29 April 2015, Mr Cheema wrote to Mr Dyson, appealing the fixed
15 penalties on the basis that (a) the bereavement had caused a delay, and (b) the requests were disproportionate and unreasonable.

24. Mr Cheema's letter was received on 5 May 2015. On 8 May 2015, Mr Dyson issued each Appellant with a daily penalty of £680, being £20 a day. On 28 May 2015, he responded to Mr Cheema's letter. He pointed out that no appeal had been
20 made against either Sch 36 Notice. In relation to the fixed penalties, he said that he did not accept that there was a reasonable excuse for the failure to provide the information and documents. He had given the Appellants a seven week extension following Mr Sanghera's bereavement, a week more than had been requested by Mr Cheema, but the Appellants had still not complied with the Notices. Furthermore,
25 these information requests had previously been set out in his letter of October 2014, so the Appellants had had plenty of time to gather the relevant material.

25. On 26 June 2015 Mr Cheema made a late appeal against the Sch 36 Notices and appealed the daily penalties. The grounds of appeal were that "information in our client's power and possession has been suppld on numerous HMRC visits"; that Mr
30 Dyson should have considered the related meeting notes, and should also have provided copies of those notes to Mr Cheema, who had not attended when these other HMRC Officers had visited the premises.

26. The appeals were refused and Mr Cheema requested a statutory review. On 24 August 2015 the HMRC Review Officer upheld the Notices and the penalties, but
35 reduced the latter to £660 to take account of a calculation error. The Appellants appealed to the Tribunal. The Notice of Appeal dated 21 September 2015 was received by the Tribunal on 1 October 2015. The grounds of appeal did not refer to Mr Sanghera's bereavement but rested on the earlier visits from other HMRC Officers.

40 27. The Appellants subsequently provided Mr Dyson with some of the information and/or documents set out in the Sch 36 Notices, as noted in more detail below.

The late notification of the appeal

28. The appeal was notified to the Tribunal after the statutory 30 day deadline. HMRC did not raise any objection to the late notification. We considered the relevant case law. The breach was not serious or significant; it was in part the result of postal
5 delays and we decided in all the circumstances that it was in the interests of justice to allow the appeals to be notified after the time limit.

Statutory records

29. Sch 36, para 29 provides that a person has no right of appeal against “a
10 requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records”. It is therefore important to establish which Items in the Sch 36 Notices form part of the Appellants’ statutory records, as those Items cannot be considered by the Tribunal.

30. Sch 36, para 62 is headed “statutory records” and begins:

15 “For the purposes of this Schedule, information or a document forms part of a person's statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—

(a) the Taxes Acts, or

(b) any other enactment relating to a tax...”

20 31. It follows that if a person is required by any statutory provision relating to a tax to keep and preserve information or a document, it is a “statutory record”. In other words, there is no link between the tax which is under enquiry, and the source of the obligation to keep records. If, for example, a taxpayer is VAT registered, and a document is required to be kept for VAT purposes, it is a “statutory record”, even if
25 the Sch 36 Notice has been issued in the context of an enquiry into his SA return.

32. It was common ground that Mr Sanghera’s obligation to keep statutory records is at Taxes Management Act 1979 (“TMA”) s 12B. In relation to Harrydev, the relevant provisions are Finance Act (“FA”) 1998, Sch 18, para 21, Value Added Tax Act 1994, Sch 11 para 6 and Reg 31 of the VAT Regulations 1995. These provisions
30 are set out in Appendix 2.

33. Mrs Rees also relied on the discussion of statutory records in *Gold Nuts v HMRC* [2017] UKFTT 74 (a decision of Judge Redston) at [139]-[151] and Mr Cheema did not dissent.

The information and documents previously provided

35 34. Mr Cheema and Mr Sanghera said that the information and documents set out in the Sch 36 Notices had previously been provided to HMRC during the many visits to the company’s premises by the VAT and CITECH inspectors. However, having considered the correspondence and visit reports included in the Bundle, we agreed with Mr Dyson that there was no evidence that the particular Items now being
40 requested had previously been provided to HMRC. We also agreed with him that VAT and CITECH Officers would not normally ask for details about rental properties,

dividends from Harrydev, or Mr Sanghera's private bank statements. We find as a fact that Mr Sanghera had not previously provided, to other HMRC Officers, the information and documents required by the Sch 36 Notices.

The Sch 36 Notice issued to Harrydev

5 *Item 1: dividend certificates and minutes*

35. Item 1 requires "Dividend Certificates in respect of dividends voted in the five years accounts ended 31 January 2012 together with minutes showing precisely when the dividends were voted and paid".

10 36. The parties made submissions about whether a dividend certificate was a statutory record, and if so, whether and to what extent the Item was constrained by the time limit for the retention of records in FA 1998, Sch 18, para 21(2) and (2A).

15 37. However, those submissions became academic in the light of Mr Cheema's subsequent evidence, which we accepted, that Harrydev did not complete certificates for dividends, or issue minutes relating to dividends. Mr Cheema said that as a small family company Harrydev did not need these formalities, whether or not they were required under the Companies Act.

20 38. Where there are no documents in existence, they cannot be provided. We also note that Sch 36, para 18 reads "An information notice only requires a person to produce a document if it is in the person's possession or power". It is of course true that a lack of documents can to some extent be remedied if HMRC require, in the alternative, that information be provided, but that is not always appropriate and no such alternative was specified in relation to this Item.

39. Since there are no certificates, and no minutes, we set aside this Item.

Items 2 and 3:

25 40. HMRC withdrew the second Item before the hearing, and Mrs Rees confirmed that Harrydev had satisfied the third Item.

Item 4: Payment of £30,500

41. This Item reads:

30 "Provide evidence to show how the payments of £30,500 from the business bank account to Mr Sanghera's personal account in the year to 31 January 2013 which have now been included as drawings in the revised 2013 Director's Loan Account were dealt with within the original accounts."

35 42. The background to this Item was that the 2013 accounts originally submitted showed director's drawings of £6,000. However, in a letter dated 7 August 2014, Mr Dyson pointed out that, during the relevant year, there had been a transfer of £27,500 from Harrydev's bank account to Mr Sanghera's personal bank account. It was common ground there was also a further transfer or transfers of £3,000, making the £30,500 referred to in the Item.

43. Mr Cheema gave the following evidence to explain the reason for the 2013 transfers from Harrydev's bank account to Mr Sanghera:

(1) There had been a shortfall in the cash at bank when Harrydev's 2010 and 2012 accounts were compiled.

5 (2) A member of Mr Cheema's staff had assumed that Mr Sanghera had taken that money as drawings, and so included it such in Harrydev's accounts and Mr Sanghera's SA returns for those years.

(3) In 2013 Mr Sanghera had belatedly realised this was an error.

10 (4) He told Mr Cheema that the cash shortfall in those earlier years should have been attributed to debtors; that he had never withdrawn the amount attributed to drawings; and he had instead taken that money out of the company in 2013.

44. In his letter to Mr Dyson of 2 September 2014, Mr Cheema stated that the debtors had subsequently paid the amounts owed. However, at the hearing he said
15 that there was no documentation to show (a) which debtors had owed money at the end of 2010 and 2012, and (b) when they had repaid that money.

45. Given that the drawings had been included in Mr Sanghera's taxable income in those two earlier years, the Tribunal asked whether Mr Sanghera had realised at the time that this was incorrect, given that it would have represented a significant
20 overstatement of his taxable income. Mr Cheema said no, Mr Sanghera "doesn't know at the time, he never knows, he just signs what we tell him", and Mr Sanghera concurred.

46. From this we understand that Mr Sanghera trusts Mr Cheema to do the book-keeping and is not concerned with how the entries are shown in his accounts or tax
25 returns. But it is simply not credible that a person who takes that hands-off approach to record-keeping would be able to tell his accountant that certain amounts had been incorrectly allocated between cash and debtors several years previously. Furthermore, if those 2010 and 2012 amounts in fact related to debtors, Mr Cheema would have been able to provide evidence to support his contentions, such as a schedule of later
30 payments from those debtors, supported by bank records or other documentation.

47. We find as a fact that Mr Sanghera did not tell Mr Cheema that the original 2010 and 2012 accounts needed correction. It follows that there is no documentary
35 support for Mr Cheema's statement that the original cash shortfall was due to debtors who later paid the company; that is consistent with our finding that his explanation is not credible.

48. We therefore set aside this Item, because we find as a fact that the documentation HMRC are seeking does not exist. It is for Mr Dyson to draw any conclusions relating to Mr Sanghera's tax return.

The penalties issued to Harrydev

49. Of the four Items on the Notice, one has been withdrawn by HMRC, one was satisfied before the hearing, and two have been set aside because the documents required do not exist. Mr Cheema submitted that the penalties should in consequence
5 be cancelled and that they were also unfair and disproportionate.

The legislation

50. Sch 36, para 39 provides that a fixed penalty of £300 can be issued if a person “fails to comply with an information notice”, and para 40 provides that a daily penalty can be issued if “the failure continues after the date on which a [fixed] penalty is
10 imposed”. Para 7 is headed “complying with notices” and begins:

“(1) Where a person is required by an information notice to provide information or produce a document, the person must do so—

(a) within such period, and

(b) at such time, by such means and in such form (if any),

15 as is reasonably specified or described in the notice.”

51. It follows from para 7(1) that a person will only have complied with a Notice if he does so within the specified time limit.

Whether Harrydev failed to comply

52. The time limit specified in the Notice was extended to 27 March 2015. The
20 notice charging a fixed penalty stated that a daily penalty would be imposed if the Notice was not complied with by 1 May 2015.

53. Harrydev did not provide the information or documents required by the Sch 36 Notice by either of those two dates. It follows that the conditions for the issuance of penalties were met, and they were properly imposed. The fact that the company
25 subsequently shows that the documentation requested does not exist (Item 1); or the Tribunal comes to that conclusion on the facts (Item 4); or the company belatedly provides the information (Item 3), does not constitute compliance with the Notice.

Reasonable excuse: principles

54. Sch 36, para 45 provides that “liability to a penalty under paragraph 39 or 40
30 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure...”

55. We therefore considered whether the company had a reasonable excuse for its failure to comply. The relevant test was set out by Judge Medd QC in *The Clean Car Co Ltd v C&E Comrs* [1991] VATTR 234 in the context of VAT, but accepted as
35 equally applicable to direct taxes:

“was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at
40 the relevant time, a reasonable thing to do?”

Reasonable excuse: the earlier visits

56. Mr Cheema submitted that Harrydev believed that HMRC already had all relevant documents and evidence as the result of earlier visits from other Officers. We have found as a fact that Mr Cheema was wrong, and that Mr Dyson was asking for new material, see §34.

57. We find that the reasonable company, acting through its officers and its accountant, would not have simply have asserted that the same information had been provided in earlier meetings with other Officers from different departments, but considered whether or not the particular information now being requested had in fact been previously supplied. Given that none of those Officers dealt with corporate tax or self-assessment, it was not reasonable to assume that there was overlap between the information provided to those Officers, and that now requested by Mr Dyson.

Reasonable excuse: the bereavement

58. We considered whether the bereavement suffered by Mr Sanghera on 23 January 2015 provided Harrydev with a reasonable excuse. In this context we note that Sch 36, para 45(2)(c) reads:

“where the person had a reasonable excuse for the failure...but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied...without unreasonable delay after the excuse ceased.”

59. Although Mr Sanghera’s bereavement was put forward as providing a reasonable excuse in Mr Cheema’s letter of 29 April 2015, it was not repeated at any later point, including in the grounds of appeal to the Tribunal, or during the hearing. We agree that this was the correct approach: even if Mr Sanghera’s bereavement provided Harrydev with a reasonable excuse for the original delay in responding to the Notice, it did not continue throughout the whole period during which Harrydev failed to comply with the Notice, and Mr Cheema and Mr Sanghera did not argue otherwise.

Reasonable excuse: the lack of documents and later compliance

60. We also considered whether the lack of documents, and the company’s later compliance with Item 3, constitutes a reasonable excuse. In other words, if a person is unable to comply because it does not have the documents requested, or complies at some later point, does that constitute a reasonable excuse so as to cause the penalties to be cancelled?

61. Sch 36, para 7 is again relevant. That paragraph requires not only the provision of information/documents, but that they be provided by the specified time limit (unless there is a separate reasonable excuse, such as illness, by which that time limit could be regarded as having been extended).

62. The statutory purpose of para 7 is clear: it is to allow HMRC to progress their enquiries without unreasonable delays. Even if a person does not possess the requested documents, a failure to make that clear to HMRC by the time limit causes

delay. A person must show not only (a) that they have a reasonable excuse for not having provided the document (for example, because they do not have it at all), but (b) they have a reasonable excuse for not having informed HMRC of that fact within the time limit.

5 63. Although Mr Cheema told Mr Dyson that all relevant documents had already been provided to Officers in other parts of HMRC, he did not inform Mr Dyson that the company does not issue certificates or minutes for dividends, and neither did he say that no documentary evidence exists to support his submissions about the cash/loan account adjustment.

10 *Reasonable excuse: conclusion*

64. For the reasons set out above, we find that there is no reasonable excuse for Harrydev's failure to comply with the Notice.

The fixed penalty: fairness and proportionality

15 65. Sch 36 para 48(4) gives the Tribunal the power to confirm penalties, or to substitute another decision HMRC could have made. Because the amount of the fixed £300 penalty is set by Sch 36, para 39(2), HMRC could not have issued it for a lower sum. It therefore follows from para 48(4) that the Tribunal too does not have that power.

20 66. The lack of a statutory power to change the £300 fixed penalty means that the Tribunal cannot reduce it, even were we to think it was unfair (which we do not), see *HMRC v Anthony Bosher* [2013] UKUT 579 (TCC).

67. In relation to proportionality, we agree with Green J in *Gibraltar Betting & Gaming Association Ltd v Secretary of State for Culture, Media & Sport* [2014] EWHC 3236 (Admin). Having considered the case law, he said:

25 "…an Act of Parliament is at the apex of the exercise of the democratic decision making process. A court should only interfere with the [the Act in question] if there are fundamental errors or where the policy choices adopted are wholly unsupported by evidence or unconnected with any lawful policy objective and cannot on any logical or sensible basis be said to be consistent with the various limbs of the proportionality test."

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68. Parliament has set a fixed £300 penalty for failure to comply with a Notice and there is no basis on which the Tribunal could find that this was disproportionate.

The daily penalty: proportionality and fairness

35 69. Sch 36, para 40(2) allows HMRC to impose penalties "not exceeding £60 for each subsequent day" on which the failure continues. HMRC could therefore have charged a lower daily penalty, and it follows from Sch 36 para 48(4) that the Tribunal also has the power to reduce the penalty.

40 70. In assessing whether that penalty is disproportionate we rely on the extensive case law, including *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39. We take

into account that this is a daily penalty, and that Harrydev was warned at the beginning of the period that the penalty would be charged on that basis. Thus, had the company complied sooner, it could have stopped the penalty running. It is also relevant that the company's inability to comply with two of the four Items, because of the lack of documents (and not because they had been provided to another HMRC Officer), only became clear during this hearing. Taking all relevant matters into account, we find that the penalty is proportionate. We also do not see anything unfair in either the imposition of the penalty or its quantum.

The Sch 36 Notice issued to Mr Sanghera

Item 1: details of rental income

71. Item 1 is "confirm that details of rental income received have always been provided to your agents in the same manner as you did for the year to 5 April 2013 in the form of a handwritten schedule. Alternatively supply full details of how this information was provided in the past". Mr Sanghera provided that confirmation at the hearing.

Item 2: Nottingham Rd lease agreement

72. Item 2 required "a copy of the lease agreement for 5 Nottingham Rd". Mr Sanghera's evidence was that, at the relevant time, there was no written tenancy agreement, and the tenant was subsequently evicted for non-payment of rent. We accept Mr Sanghera's evidence.

73. The Notice asked only for a document, namely the lease agreement, not for information about the lease. As there is no such document, we set aside this Item in the Notice.

Item 3: Nottingham Rd inventory

74. The Notice also required that Mr Sanghera provide a copy of the inventory for the Nottingham Rd property. HMRC submitted that the inventory was reasonably required, given that Mr Sanghera had claimed wear and tear allowances on all his properties.

75. When cross-examined by Mrs Rees as to whether his properties were let furnished, Mr Sanghera said that they were "not all let furnished – some tenants come with own furniture and some without". Mrs Rees referred to the claims for wear and tear allowance, and Mr Sanghera said again "some are not furnished". In relation to the Nottingham Rd property specifically, he said he couldn't remember if furniture had been provided, but if that was the case, he did not have a list of that furniture.

76. The Tribunal found it highly improbable that a landlord would provide furniture but (a) be unable to remember whether the property was furnished or unfurnished and (b) not keep any list of what had been provided. We find as a fact that no furniture was provided in this property, and it follows that there was no inventory. As a result, we set aside this Item.

Item 4: documents re rent reduction

77. Item 4 asked for “copies of all correspondence exchanged between your client, his representatives and the tenant regarding the reduction in rent payable”. Mr Dyson explained that Mr Sanghera’s bank statements show rent of £1,200 being received each month for 5 Nottingham Rd, but the schedule of rent provided by Mr Cheema states that the monthly rent was £1,100. Mr Cheema and Mr Sanghera said that the tenant was paying £1,200 rather than the £1,100 which was due, because she owed money from previous periods. They both stated that there is no documentation about the difference between the £1,200 received and the £1,100 shown on Mr Cheema’s schedule.

78. The Tribunal accepts that there is no documentation to support Mr Sanghera’s and Mr Cheema’s explanation of the difference. We make no finding on whether that explanation is correct: that will be a matter for Mr Dyson when deciding whether to amend Mr Sanghera’s SA calculation for that year. However, we set aside this Item in the Notice, because we find that the documents required do not exist.

Item 5: deposit for Nottingham Road

79. Item 5 reads “in view of the amount involved, provide documentary evidence of the source of the c£35,000 deposit required to complete the purchase of this property in the form of the solicitor’s completion statement”.

80. Mr Sanghera’s evidence was the property was purchased in 2007, and Mr Dyson did not dispute that. The Tribunal drew the parties’ attention to Sch 36, para 20. This is headed “old documents” and reads:

“An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer.”

81. Mr Dyson confirmed that the Notice was not given by, or with the approval of, an authorised officer, and withdrew this Item from the Notice.

Item 6: repairs for 85 Colchester Road

82. Item 6 asked for invoices and expense vouchers covering the £2,481 claimed as repairs to this property. Mr Dyson said that these documents were statutory records, Mr Sanghera accepted that this was the position, and we agree.

Item 7: lease agreements for 85 Colchester Road

83. This Item reads “provide lease agreements for the year to 5 April 2013 in respect of flats 85a, 85b & 85c Colchester Road”. TMA s 12B(1)(a) requires that a person “keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete [SA] return for the year or period”. The lease agreement sets out the rental due to the landlord and the costs which both the landlord and tenant must bear. We consider that lease agreements would normally be “requisite” so a person can complete his SA return, but we also accept that, in an individual case, a person may have other evidence, such as bank statements and correspondence, on which he can rely to make a correct and complete return.

84. In any event, HMRC did not submit that the lease agreements were statutory records, but rather that they were reasonably required. This was not disputed and we agreed.

5 85. Mr Sanghera accepted that written agreements existed for this property, but said he did not have copies; he thought they might have been provided to HMRC on a previous inspection and not returned to him. However, he later accepted that the tenants would have copies, and agreed to comply with the Item.

Item 8: inventories for 85 Colchester Road

10 86. This Item requires “signed inventories in respect of all four flats at 85 Colchester Rd for the year to 5 April 2013”. Mr Sanghera denied having inventories. We accept his evidence and set aside this Item.

87. Mr Dyson referred again to the wear and tear allowance claimed, but it is a matter for him whether he accepts that Mr Sanghera would have furnished these properties but not retained any inventory of those furnishings.

15 *Item 9: acquisition of 85 Colchester Road*

88. This Item requires that Mr Sanghera “confirm when and how this property came into your ownership when it was originally owned by your parents and whether you made any payment to secure ownership”.

20 89. HMRC did not submit that this was a statutory record, and we agree. A person can run a letting business from a property without necessarily being its owner.

90. Mrs Rees said that there was no reference to this property on the Land Registry and that the information in this Item was reasonably required for HMRC to check that any applicable stamp duty and/or capital gains tax had been paid, and that it was also reasonably required in the context of HMRC’s overall concerns about Mr Sanghera’s means.
25

91. Mr Sanghera accepted that the property was not registered at the Land Registry. He said it had originally been acquired by his father, he thought in around 1984, for approximately £60k. His witness statement stated:

30 “I am the only son and I have five sisters. In our Indian Punjabi culture the sons are given the property by the parents. The daughters do not get anything. In accordance with this custom, my late parents passed their property to me. This was dealt with by my father and I have no details. The property may have been passed to me on my 21st birthday in 1991 and also at my wedding in 2001.”

35 92. Mr Sanghera told the Tribunal that he did not know if his father had left a will when he passed away in January 2015, or if he had died intestate, but said he had not been his father’s executor or administrator. His witness statement said that he “does not have any documents to ‘confirm when and how’ the property came into his ownership”.

93. He also said that he had paid nothing to his father for the property. This was accepted by HMRC, and so that part of the Item is no longer in dispute.

94. The Tribunal pointed out that land cannot be transferred orally – ie by making a declaration. Instead, it must be transferred by a deed, see the Law of Property Act 1925, s 52. Moreover, such a transfer must satisfy the “signed writing” requirements set out in the Law of Property (Miscellaneous Provisions) Act 1989, s 2, and since the advent of compulsory registration, the property must also be registered on transfer at the Land Registry, either under the Land Registration Act 1925, or under the Land Registration Act 2002.

95. It is thus not possible as a matter of law for Mr Sanghera’s father to have transferred 85 Colchester Road to Mr Sanghera in 1991 or 2001 simply by telling him that the property was his. If the property was not conveyed by deed during his father’s lifetime, it may be an undistributed asset of his estate, and so not in Mr Sanghera’s ownership at all.

96. It is not for this Tribunal to comment on (a) the consequences for the division of Mr Sanghera’s father’s estate if he died without making a will, or (b) the possible inheritance tax consequences if the property has not yet been declared as an asset of his estate. Our only task is to decide whether HMRC’s request for information about how the property came into Mr Sanghera’s ownership is reasonably required, and if so, whether it has been complied with.

97. The Item did not require documents, but information. Mr Sanghera responded by providing very vague information. However, we accepted that this was because the transfer had been informal and so he could not check the details to any document transferring the property to him.

98. We also found that the information is not in any event reasonably required, because:

(1) the Item is not relevant to HMRC’s concerns about Mr Sanghera’s means, because HMRC accepted that Mr Sanghera did not pay anything for the property;

(2) Mrs Rees also refers to stamp duty, but stamp duty/SDLT will not have been chargeable, because Mr Sanghera did not give consideration for the property;

(3) he has not disposed of the property, so CGT cannot be relevant;

(4) the information may be relevant to the IHT position following his father’s death, but IHT was not put forward as a reason by Mrs Rees, and that liability would normally rest with the executor/administrator. Mr Sanghera has denied being either the executor or the administrator of his father’s estate, and HMRC have not challenged that evidence; and

(5) any IHT liability which might attach to that executor/administrator cannot be within the scope of a first party Notice under Sch 36, para 1.

99. Taking all those matters into account, we set the Item aside.

Item 10: acquisition of 83 Colchester Road

100. This Item requires that Mr Sanghera provide “full details of when and how this property came into your ownership supplying details of all financial transactions together with documentary evidence to support the source of funding”. Mrs Rees did not submit that this was a statutory record, but that the information was reasonably required for HMRC to check that any applicable stamp duty, IHT and/or capital gains tax had been paid and in the context of HMRC’s concerns about Mr Sanghera’s means. She said that, like 85 Colchester Road, this property too was not on the Land Registry.

101. Mr Sanghera’s evidence was that the property had been built on land which was previously part of 85 Colchester Rd; his father had obtained the relevant planning permission. He accepted that it was not on the Land Registry, but said he has no documentation as to his ownership of the property.

102. The Tribunal accepted Mr Sanghera’s evidence and our comments in relation to 85 Colchester Rd apply here too. We set aside the Item.

Items 11 and 12: 81 Colchester Road

103. These two Items were abandoned by HMRC before the hearing.

Items 13 and 14: 81 Colchester Road – tenancy agreements and inventories

104. These Items require “copies of all tenancy agreements and signed inventories for all flats at 81 Colchester Rd for the year to 5 April 2013”. The position is the same as in relation to 85 Colchester Rd. The tenancy agreements were reasonably required and Mr Sanghera agreed to provide HMRC with copies which he will obtain from his tenants. He denied having inventories and the Tribunal accepted his evidence. It follows that we uphold Item 13 but set aside Item 14.

Item 15: 113/113A Peterborough Road

105. This Item requires “a statement from Platform Mortgages showing the amount borrowed and the amount outstanding for the year to 5 April 2013”. Mr Sanghera said that 113 and 113A were two separate properties, each with their own mortgage. After some discussion, the parties agreed that HMRC had been provided with the mortgage statement in relation to 113 Peterborough Road from Mortgage Works, but not that from Platform Mortgages for the property at 113A.

106. HMRC’s position was that the mortgage interest statement was reasonably required. Mr Sanghera accepted this was the position and said he would obtain a copy from Platform Mortgages and provide it to HMRC.

107. We have therefore not sought to enquire as to whether the statement was a statutory record as being “requisite for the purpose of enabling [Mr Sanghera] to make and deliver a correct and complete return” in relation to his property lettings business, or whether Mr Sanghera had another document setting out the interest payable on which he could rely in making his SA return.

Item 16: repayment from solicitors

108. This Item was abandoned by HMRC before the hearing.

Items 17 and 18: 113/113A Peterborough Road: tenancy agreements and signed inventories

5 109. These Items required the provision of “a copy of the tenancy agreements and signed inventories for the year to 5 April 2013 for the flats at 113/113A Peterborough Road”.

10 110. The position is again the same as in relation to 85 Colchester Rd. The tenancy agreements were reasonably required and Mr Sanghera agreed to provide HMRC with copies which he will obtain from his tenants. He denied having inventories and the Tribunal accepted his evidence. It follows that we uphold Item 17 but set aside Item 18.

Item 19: Barclays Premier Account: deposits said to be from Mr Lal

15 111. Mr Cheema had provided Mr Dyson with a schedule of rental income received from tenants. Mr Dyson compared that list with the deposits into Mr Sanghera’s Barclays Premier account, and identified several amounts which did not match.

20 112. This Item refers to four deposits in Mr Sanghera’s Barclays account which totalled £8,000: two of £2,000, one of £1,500 and one of £2,500. Mr Sanghera had told HMRC that these were “repayments of money lent to a friend, A Lal”. The Item asks for:

25 “The full name and address of this individual together with details of the circumstances under which the money was originally loaned and how the funds were provided to A Lal supported by appropriate bank statements showing the cash withdrawals or copies of paid cheques. Details of any interest charged and terms of repayment should also be provided.”

113. HMRC submitted that the Item was reasonably required because Mr Sanghera’s tax return showed only rental income and these deposits did not match with those on the schedule provided by Mr Cheema.

30 114. Mr Sanghera said Mr Lal was not a tenant, but a personal friend. Under cross-examination, he stated that Mr Lal’s first name was Asif, and agreed to provide HMRC with Mr Lal’s address. However, he said he could not comply with the other parts of this Item because he could not remember when money had been lent to Mr Lal, how much had been lent, when it was lent, or how much of the loan remained.
35 When asked how he would know when the loan had been repaid in full, he said he trusted Mr Lal.

40 115. Mr Cheema submitted that it was unreasonable for Mr Sanghera to have to provide information about these deposits because other HMRC Officers had previously carried out cash reconciliations and other checks into Mr Sanghera’s business, but had found nothing unsatisfactory.

116. We agreed with HMRC that it is reasonable that a taxpayer – such as Mr Sanghera – who receives rental income into his private bank account, should provide substantiating evidence in relation to deposits made into that account. The fact that other HMRC Officers had at some point carried out cash reconciliations is not relevant. There is no evidence that these other HMRC Officers checked any payments to or from Mr Lal.

117. However, we also considered Mr Sanghera’s evidence. Taking into account his annual income of below £24k, it is simply not credible that he would (a) not remember why he made a loan of at least £8,000; (b) not remember when the loan was made; (c) not know whether, or to what extent, the full amount of that debt had been repaid; and (d) not have in his possession or power the bank statements which would substantiate the existence of the loan.

118. It follows that there are two possibilities. The first is that the relevant documents are in Mr Sanghera’s possession or power. The second is that no such loan was made, and the deposits were made for some other reason.

119. If we simply uphold this Item of the Notice, Mr Sanghera will be obliged as a matter of law to provide the documents. We have therefore varied this Item, so that it reads as follows (with the inserted text underlined):

“Mr Sanghera is to confirm whether he still maintains that these sums are the repayment of a loan from Mr Lal. If he does not, he is to explain the source of these amounts. If he does, he is to provide the full name and address of this individual together with details of the circumstances under which the money was originally loaned and how the funds were provided to A Lal supported by appropriate bank statements showing the cash withdrawals or copies of paid cheques. Details of any interest charged, repayments made to date and terms of repayment should also be provided.”

Item 20: Barclays Premier Account: other deposits

120. Mr Dyson identified a further four deposits totalling £5,914, which he could not match to the rental income schedule prepared by Mr Cheema. Item 20 required that Mr Sanghera explain what these deposits were, and provide documentary evidence to support that explanation.

121. Mr Sanghera accepted that this Item was reasonably required, and said he would provide details to HMRC after the hearing. We agree with the parties that the information was reasonably required.

Item 21: Information about OWG

122. This Item asked for information about Mr Sanghera’s investments with a firm called OWG Ltd. Mrs Rees said that HMRC now accepted that Mr Sanghera had complied with the requirements in this Item.

Items 22-24: Barclays Essential Savings

123. These Items followed from HMRC's review of Mr Sanghera's Essential Savings account with Barclays. Mr Sanghera accepted during the hearing that all three Items were reasonably required, and we agree.

Items 25 and 26: Nationwide account: details of Mr Sanghera's son

5 124. Mr Sanghera has already disclosed to HMRC that he has a bank account with Nationwide. He has told Mr Dyson that this is a joint account with his son. Item 25 asks for the latter's full name, address and date of birth. Mr Dyson accepted that this had been satisfied.

10 125. Item 26 requires "a statement from the Nationwide confirming that this account is held in joint names". Mrs Rees submitted that this was reasonably required. Mr Sanghera accepted this was the position and said he would ask the Nationwide for the statement. We agree that the document is reasonably required.

Item 27: Nationwide account: opening balance

126. This Item reads:

15 "The opening balance on the photocopied page at 29 September 2011 was £52,660.49. Please supply a full explanation together with documentary evidence to support the source of the capital held."

20 127. The parties agreed that Mr Sanghera had completed an SA return in the 2011-12 tax year, and that there was no open enquiry into that return. The Tribunal drew HMRC's attention to Sch 36, para 21, which begins:

25 "(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period."

128. There are four exceptions to that prohibition, set out in Conditions A to D. Mrs Rees accepted that the only paragraph which was potentially relevant to Mr Sanghera was Condition B, which reads (emphasis added):

30 "Condition B is that an officer of Revenue and Customs has reason to suspect that, as regards the person,—

- (a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,
- (b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or
- 35 (c) relief from relevant tax given for the chargeable period may be or have become excessive."

40 129. Mrs Rees accepted that "reason to suspect" was a higher threshold than "reasonably required". Mr Dyson said that Mr Sanghera's previous SA returns disclose two sources of income, Harrydev and the properties, and the levels of income declared in those returns mean that the opening balance of over £50k cannot have

come from that declared income. It followed that there was “reason to suspect” an under-declaration of income in relation to an earlier year.

5 130. Mr Cheema did not dispute that the level of income shown on Mr Sanghera’s previous returns would not have allowed him to have accumulated these savings, and he also did not submit that Mr Sanghera’s son had provided the funds. Instead, he suggested that the balance could have come from another source, such as a gift from Mr Sanghera’s father, or that it had been built up over a number of years from various (unspecified) sources.

10 131. We agree with HMRC that savings of over £50k are disproportionate to the level of earnings declared by Mr Sanghera. Although Mr Cheema put forward possible explanations for these accumulated funds, these were entirely hypothetical. We find that Mr Dyson has met Condition B and uphold the Item.

Items 28-30: Nationwide account: three deposits

15 132. Included in the Nationwide account are three deposits: £7,000 made on 16 January 2012; £1,000 on 24 April 2012 and £2,500 on 20 July 2012. Items 28-30 require Mr Sanghera to “identify and supply documentary evidence of” the source of these deposits.

20 133. Mr Sanghera conceded that it was reasonable for HMRC to require the specified information about the two deposits made in 2012-13, the year which was under enquiry (Items 29 and 30). However, he and Mr Cheema challenged whether Mr Dyson had met the higher “reason to suspect” test in relation to the £7,000 (Item 29).

25 134. Mr Dyson’s evidence was that he had checked Mr Sanghera’s SA return for the previous year, and could find nothing which could account for this £7,000; he therefore had reason to suspect that it was undeclared income. Mr Cheema did not challenge Mr Dyson’s evidence about the previous year’s return, but said that the money might have been wrongly categorised in that year’s SA return.

30 135. We find that Mr Dyson had reason to suspect that the money might be undeclared taxable income, because he had analysed Mr Sanghera’s previous year’s SA return, and identified a significant bank deposit which cannot be linked to the entries in that SA return.

136. We uphold Item 28 because the “reason to suspect” test is met, and Items 29-30 because they are reasonably required.

Item 31: Nationwide account: passbooks

35 137. The final Item concerned the passbooks: HMRC withdrew this Item before the hearing.

The penalty notices issued to Mr Sanghera

138. For essentially the same reasons as set out in relation to Harrydev:

(1) there was a failure to comply with the Notice. The fact that Mr Sanghera subsequently agreed to supply some of the information and documents does not amount to compliance with the Notice;

5 (2) Mr Sanghera did not have a reasonable excuse for that failure to comply, whether by relying on one or more of the following:

(a) the bereavement;

(b) his submission that other HMRC Officers had been provided with the Items; and/or

10 (c) his belated compliance with the Notice in respect of some of the Items; and

(3) there is no legal basis on which the Tribunal is able to interfere with the fixed penalty.

139. We also had no hesitation in confirming the daily penalty as both fair and proportionate, given the numerous Items in issue and Mr Sanghera's failure to comply with the Notice by the specified time limit.

Full decision and appeal rights

140. This document contains full findings of fact and reasons for the decision.

141. There is no right of appeal against the Tribunal's decisions to uphold, vary or set aside Items in the Sch 36 Notices, see Sch 36, para 32(5).

20 142. If either or both Appellants are dissatisfied with the Tribunal's decision to uphold the penalties, they have a right to apply for permission to appeal against those decisions under Rule 39 of the Tribunal Rules. The permission to appeal 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
25 First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this Decision.

30 **ANNE REDSTON**
TRIBUNAL JUDGE

RELEASE DATE: 7 AUGUST 2017

APPENDIX 1

THE SCHEDULE 36 NOTICES

HARRYDEV LIMITED			
No.	Item	Outcome	Reason
1	Dividend certificates + minutes	Set aside by Tribunal	No documents
2	Copies of bank statements	Withdrawn by HMRC before hearing	
3	Reduction in turnover	Satisfied before hearing	
4	Adjustments to 2013 accounts	Set aside by Tribunal	No documents

MR SANGHERA			
No.	Item	Outcome	Reason
1	Rental income details	Satisfied by Mr S at hearing	
2	Nottingham Road Lease	Set aside by Tribunal	No document
3	Nottingham Road inventory	Set aside by Tribunal	No document
4	Documents re rent reduction	Set aside by Tribunal	No document
5	Nottingham Road deposit	Withdrawn by HMRC at hearing	Old document – Sch 36, para 20
6	85 Colchester Road repairs	Statutory record	
7	85 Colchester Road Lease Agreement	Upheld by Tribunal: Mr S agreed to obtain copy from tenants	Reasonably required
8	85 Colchester Road inventory	Set aside by Tribunal	No document
9	85 Colchester Road acquisition	Set aside by Tribunal	No document
10	83 Colchester Road acquisition	Set aside by Tribunal	No document
11,12	81 Colchester Road	Abandoned by HMRC before hearing	
13	81 Colchester Road: Lease	Upheld by Tribunal: Mr S agreed to obtain copies from tenants	Reasonably required
14	81 Colchester Road: inventory	Set aside by Tribunal	No document
15	113/113A Peterborough Rd: Platform Mortgages statement	Mr S agreed to obtain from mortgagee	Reasonably required

16	Repayment from solicitors	Abandoned by HMRC before hearing	
17	113/113A Peterborough Rd: Lease	Upheld by Tribunal: Mr S agreed to obtain copies from tenants	Reasonably required
18	113/113A Peterborough Rd: inventory	Set aside by Tribunal	No document
19	Barclays Premier: Mr Lal	Upheld by Tribunal	Varied, see §119
20	Barclays Premier: other deposits	Upheld by Tribunal	Reasonably required
21	OWG	Satisfied before hearing	
22-24	Barclays Essential	Upheld by Tribunal	Reasonably required
25	Nationwide: details of son	Satisfied before hearing	
26	Nationwide: confirmation re joint account	Upheld by Tribunal: Mr S agreed to obtain from Nationwide	Reasonably required
27	Nationwide: Opening balance	Upheld by Tribunal	Reason to suspect
28-30	Nationwide: three deposits	Upheld by Tribunal	Reasonably required/reason to suspect
31	Nationwide: passbooks	Abandoned by HMRC before hearing	

APPENDIX 2
LEGISLATION
TAXES MANAGEMENT ACT 1970

12B Records to be kept for purposes of returns

- 5 (1) Any person who may be required by a notice under section 8, 8A or 12AA of this Act to make and deliver a return for a year of assessment or other period shall—
- 10 (a) keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period; and
- (b) preserve those records until the end of the relevant day, that is to say, the day mentioned in subsection (2) below or, where a return is required by a notice given on or before that day, whichever of that day and the following is the latest, namely—
- 15 (i) where enquiries into the return are made by an officer of the Board, the day on which, by virtue of section 28A(1) or 28B(1) of this Act, those enquiries are completed; and
- (ii) where no enquiries into the return are so made, the day on which such an officer no longer has power to make such enquiries.
- 20 (2) The day referred to in subsection (1) above is—
- (a) in the case of a person carrying on a trade, profession or business alone or in partnership or a company...;
- (b) otherwise, the first anniversary of the 31st January next following the year of assessment
- 25 or (in either case) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).
- (2A) Any person who—
- 30 (a) is required, by such a notice as is mentioned in subsection (1) above given at any time after the end of the day mentioned in subsection (2) above, to make and deliver a return for a year of assessment or other period; and
- (b) has in his possession at that time any records which may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period,
- 35 shall preserve those records until the end of the relevant day, that is to say, the day which, if the notice had been given on or before the day mentioned in subsection (2) above, would have been the relevant day for the purposes of subsection (1) above.
- 40

VALUE ADDED TAXES ACT 1994, SCHEDULE 11

6. Duty to keep records

- (1) Every taxable person shall keep such records as the Commissioners may by regulations require...
- 5 (2) Regulations under sub-paragraph (1) above may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (3) The Commissioners may require any records kept in pursuance of this paragraph to be preserved for such period not exceeding 6 years as they may specify in writing (and different periods may be specified for different cases)
- 10 (4) The duty under this paragraph to preserve records may be discharged—
- (a) by preserving them in any form and by any means, or
- (b) by preserving the information contained in them in any form and by any means,
- 15 subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty's Revenue and Customs.

VAT REGULATIONS 1995

31. Records

- 20 (1) Every taxable person shall, for the purpose of accounting for VAT, keep the following records—
- (a) his business and accounting records,
- (b) his VAT account,
- (c) copies of all VAT invoices issued by him,
- 25 (d) all VAT invoices received by him
- (da) all certificates
- (i) prepared by him relating to acquisitions by him of goods from other member States, or
- (ii) given to him relating to supplies by him of goods or services,
- 30 provided that, owing to provisions in force which concern fiscal or other warehousing regimes, those acquisitions or supplies are either zero-rated or treated for the purposes of the Act as taking place outside the United Kingdom,
- (e) documentation received by him relating to acquisitions by him of any goods from other member States,
- 35 (f) copy documentation issued by him relating to the transfer, dispatch or transportation of goods by him to other member States,
- (g) documentation received by him relating to the transfer, dispatch or transportation of goods by him to other member States,
- 40 (h) documentation relating to importations and exportations by him, and

- (i) all credit notes, debit notes, or other documents which evidence an increase or decrease in consideration that are received, and copies of all such documents that are issued by him...
- (2) The Commissioners may
 - (a) in relation to a trade or business of a description specified by them, or
 - (b) for the purposes of any scheme established by, or under, Regulations made under the Act,
 supplement the list of records required in paragraph (1) above by a notice published by them for that purpose.

10 **FINANCE ACT 1998, SCHEDULE 18**

- 21. Duty to keep and preserve records**
- (1) A company which may be required to deliver a company tax return for any period must
 - (a) keep such records as may be needed to enable it to deliver a correct and complete return for the period, and
 - (b) preserve those records in accordance with this paragraph.
 - (2) The records must be preserved until the end of the relevant day.
 - (2A) In this paragraph “relevant day” means
 - (a) the sixth anniversary of the end of the period for which the company may be required to deliver a company tax return, or
 - (b) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).
 - (3) If the company is required to deliver a company tax return by notice given before the end of the relevant day, the records must be preserved until any later date on which
 - (a) any enquiry into the return is completed, or
 - (b) if there is no enquiry, an officer of Revenue and Customs no longer has power to enquire into the return.
 - (4) ...
 - (5) The records required to be kept and preserved under this paragraph include records of
 - (a) all receipts and expenses in the course of the company's activities, and the matters in respect of which the receipts and expenses arise, and
 - (b) in the case of a trade involving dealing in goods, all sales and purchases made in the course of the trade.
 - (5A) The Commissioners for Her Majesty's Revenue and Customs may by regulations
 - (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and

- (b) provide that those records include supporting documents so specified.
- (5B) Regulations under this paragraph may
- (a) make different provision for different cases, and
- (b) make provision by reference to things specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice).

5

“Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

10

FINANCE ACT 2008, SCHEDULE 36

1. Power to obtain information and documents from taxpayer

- (1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)—
- (a) to provide information, or
- (b) to produce a document,
- if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.
- (2) In this Schedule, “taxpayer notice” means a notice under this paragraph.

15

20

6. Notices

- (1) In this Schedule, “information notice” means a notice under paragraph 1, 2 or 5.
- (2) An information notice may specify or describe the information or documents to be provided or produced.

25

7. Complying with notices

- (1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
- (a) within such period, and
- (b) at such time, by such means and in such form (if any),
- as is reasonably specified or described in the notice.
- (2) Where an information notice requires a person to produce a document, it must be produced for inspection
- (a) at a place agreed to by that person and an officer of Revenue and Customs, or
- (b) at such place as an officer of Revenue and Customs may reasonably specify...

30

35

...

40

18. Documents not in a person's possession or power

An information notice only requires a person to produce a document if it is in the person's possession or power.

5

20. Old documents

An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer.

10

21. Taxpayer notices following tax return

15

(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period.

20

(2) Where a person has made a tax return in respect of a chargeable period under paragraph 3 of Schedule 18 to FA 1998 (company tax returns), a taxpayer notice may not be given for the purpose of checking that person's corporation tax position in relation to the chargeable period.

(3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.

25

(4) Condition A is that a notice of enquiry has been given in respect of—

(a) the return, or

(b) a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”),

and the enquiry has not been completed.

30

(5) In sub-paragraph (4), “notice of enquiry” means a notice under—

(a) section 9A or 12AC of, or paragraph 5 of Schedule 1A to, TMA 1970, or

(b) paragraph 24 of Schedule 18 to FA 1998.

35

(6) Condition B is that an officer of Revenue and Customs has reason to suspect that, as regards the person,—

(a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,

(b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or

(c) relief from relevant tax given for the chargeable period may be or have become excessive.

40

(7) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking the person's position as regards any tax other than income tax, capital gains tax or corporation tax.

(8) Condition D is that the notice is given for the purpose of obtaining any information or document that is required (or also required) for the purpose of checking the person's position as regards any deductions or repayments of tax or withholding of income referred to in paragraph 64(2) or (2A) (PAYE etc).

5 (9) In this paragraph, references to the person who made the return are only to that person in the capacity in which the return was made.

....

29. Right to appeal against taxpayer notice

10 (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal against the notice or any requirement in the notice.

(2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records.

....

15 **32. Procedure**

(1) Notice of an appeal under this Part of this Schedule must be given—

(a) in writing,

(b) before the end of the period of 30 days beginning with the date on which the information notice is given, and

20 (c) to the officer of Revenue and Customs by whom the information notice was given.

(2) Notice of an appeal under this Part of this Schedule must state the grounds of appeal.

(3) On an appeal that is notified to the tribunal, the tribunal may—

25 (a) confirm the information notice or a requirement in the information notice,

(b) vary the information notice or such a requirement, or

(c) set aside the information notice or such a requirement.

30 (4) Where the tribunal confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement—

(a) within such period as is specified by the tribunal, or

35 (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.

(5) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 a decision of the tribunal on an appeal under this Part of this Schedule is final.

40 (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

....

39. Penalties for failure to comply or obstruction

- (1) This paragraph applies to a person who—
 (a) fails to comply with an information notice, or...

5 (2) The person is liable to a penalty of £300.

40. Daily default penalties for failure to comply or obstruction

- (1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.

10 (2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

....

44. Failure to comply with time limit

15 A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under paragraph 39 or 40 if the person did it within such further time, if any, as an officer of Revenue and Customs may have allowed.

45. Reasonable excuse

20 (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.

(2) For the purposes of this paragraph—

- 25 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
30 (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

...

47. Right to appeal against penalty

35 A person may appeal against any of the following decisions of an officer of Revenue and Customs—

- (a) a decision that a penalty is payable by that person under paragraph 39, 40 or 40A, or
(b) a decision as to the amount of such a penalty.

40 **48. Procedure on appeal against penalty**

(1) Notice of an appeal under paragraph 47 must be given—

- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, and
 - (c) to HMRC.
- 5 (2) Notice of an appeal under paragraph 47 must state the grounds of appeal.
- (3) On an appeal under paragraph 47(a), that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 47(b), that is notified to the tribunal, the tribunal may—
- 10 (a) confirm the decision, or
- (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- (5) Subject to this paragraph and paragraph 49, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.
- 15

49. Enforcement of penalty

- (1) A penalty under paragraph 39, 40 or 40A must be paid—
- 20 (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, or
- (b) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under paragraph 39, 40 or 40A may be enforced as if it were income tax charged in an assessment and due and payable.
- 25

...

58. General Interpretation

In this Schedule—

30 “document” includes a part of a document (except where the context otherwise requires),

“enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c 30))...

“the Taxes Acts” means—

(a) TMA 1970,

35 (b) the Tax Acts, and

(c) TCGA 1992 and all other enactments relating to capital gains tax...

...

62. Statutory records

- (1) For the purposes of this Schedule, information or a document forms part of a person's statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—
- 40

- (a) the Taxes Acts, or
 - (b) any other enactment relating to a tax,
subject to the following provisions of this paragraph.
- 5 (2) To the extent that any information or document that is required to be kept and preserved under or by virtue of the Taxes Acts—
- (a) does not relate to the carrying on of a business, and
 - (b) is not also required to be kept or preserved under or by virtue of [any other enactment relating to a tax,
it only forms part of a person's statutory records to the extent that the chargeable period or periods to which it relates has or have ended.
- 10 (3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired.

63. Tax

- 15 (1) In this Schedule, except where the context otherwise requires, “tax” means all or any of the following—
- (a) income tax,
 - (b) capital gains tax,
 - (c) corporation tax....
- 20 and references to “a tax” are to be interpreted accordingly...