[2020] UKFTT 177 (TC)

TC07664

Appeal numbers: TC/2018/3371 & 3372

Income tax – information notice - penalties for failure to comply – Harrydev [2017] UKFTT 616 ***not followed.***

FIRST-TIER TRIBUNAL
TAX CHAMBER

JACQUELINE BRANTJES **Appellant**

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER
DUNCAN MCBRIDE

Sitting in public at Taylor House EC1R on 13 January 2020 with later written submissions

Albert Fox with Sam Lyons of e-Better Books Ltd for the Appellant

Gemma Adams for the Respondents

DECISION

Introduction

1. On 22 May 2018 Ms Brantjes notified an appeal to the tribunal against two information notices and notified a second appeal against penalties for the failure to comply with those notices. The tribunal directed that the appeals be consolidated and heard together on 15 August 2018. This decision addresses both appeals.

Information Notices

2. Paragraph 1 schedule 36 Finance Act 2008 provides that an officer of HMRC: "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 purposes of checking the taxpayer's tax position."

3. Such a notice is called an "information notice" (paragraph 6 Sch 36). Statutory references hereafter are, unless otherwise specified, to Sch 36 Finance Act 2008.

4. On 8 November 2016, after having made an informal request, Mr McDonald, an officer of HMRC, sent a letter to Ms Brantjes headed “Notice to produce documents”, attaching a schedule headed "schedule of information and documents needed to carry out our check". We shall call this letter and schedule the First Notice (by calling it a Notice we do not intend to prejudge Mr Fox’s submissions that the letter did not constitute an information notice within paragraph 1 schedule 36).

5. On 27 October 2017, again after having made an informal request, Mr McDonald sent another letter to Ms Brantjes enclosing a second schedule setting out a different list of information and documents he required. We shall call this letter and schedule the Second Notice.

6. Paragraph 7 schedule 36 provides that if a person is required by a notice under paragraph 1 to provide information or produce a document, the person must do so within such time “as is reasonably specified or described in the notice”. There are exceptions to this duty to which we shall refer later.

7. The First Notice said that Ms Brantjes must let Mr McDonald have the "documents" he had asked for by 8 December 2016 (that is, within one month). The Second Notice said that the “documents” asked for in that letter must be given to Mr McDonald by 27 November 2017. Neither letter indicated expressly when the *information* requested should be given to Mr McDonald.

8. We think it implicit that the information requested was required by the same dates as the documents; and indeed there was nothing in the correspondence suggesting that

there had been any misapprehension and no one suggested any differently before us. We conclude therefore that the time for compliance was "specified or described" in the Notices.

9. After the First Notice there was a meeting on 25 May 2017, and after the Second Notice there was correspondence between Ms Brantjes (and her advisers) and HMRC about the information and documents Mr McDonald had asked for. Some of the information and documents were provided within the period specified in the Notices, but not all.

Penalties

10. Paragraph 39 schedule 36 applies to a person who "fails to comply with an information notice". Paragraph 39 (2) provides that such a person is liable to a penalty of £300. We consider that if a person complies with some requirements of a notice but fails to comply with other lawful requirements, then he or she "fails to comply with [the] notice". An issue arises in relation to whether failures in relation to two information notices give rise to one or two penalties; we discuss that issue in paragraphs [102] to [104] below in the section dealing with the appeals against the penalties.

11. Paragraph 40 applies if such a failure continues after the date on which a penalty is imposed under paragraph 39. It provides that the person is liable to further penalties "not exceeding £60" for each subsequent day's failure.

12. Paragraph 45 provides that if a person has a reasonable excuse for a failure, liability to a penalty by reason of that failure does not arise. When a reasonable excuse ceases it is treated as continuing if the failure is remedied within a reasonable time after it has ceased.

13. Paragraph 46 provides that where a person has become liable to a penalty under paragraph 39 or paragraph 40 HMRC "may assess the penalty". So far as concerns the paragraph 39 penalty that means assessing and notifying a liability of £300; so far as it concerns the paragraph 40 penalty that means HMRC deciding upon the daily amount to be levied (up to £60 per day) and then notifying that assessment.

14. Mr McDonald considered that Ms Brantjes had not complied with the information notices which he considered were constituted by the First and Second Notices; and, in relation to the First Notice:

> (1) on 8 March 2017 assessed a £300 penalty,
>
> (2) on 28 November 2017 assessed a penalty of £30 per day from 23 April 2017 to 27 November 2017 and
>
> (3) on 8 May 2018 assessed a penalty of £40 per day from 29 November 2006 to 7 May 2018;

and in relation to the Second Notice:

> (1) assessed a penalty of £300 on 8 December 2000, and

(2) on 8 May 2018 assessed a penalty of £30 per day from 9 December 2017 to 7 May 2018.

The Appeals before the tribunal – late appeals

15. In her notices of appeal Ms Brantjes seeks to appeal against both (i) the terms of the information Notices and (ii) the penalties charged. Some of these appeals were made out of time. In the following two subsections we consider whether these appeals may be considered by the tribunal.

Appeals - (i) against information notices

16. Paragraph 29 (1) gives a taxpayer the right to appeal against an information notice, but paragraph 29 (2) excludes from that right any requirement in such a notice to produce or provide something which forms part of a taxpayer's "statutory records". "Statutory records" means information or documents the person is required to keep under and for the period prescribed in enactments relating to a tax (see paragraph 62).

17. But both the First and the Second Notice had a section dealing with "[a]ppealing against this notice". It said:

> "I am only asking for statutory records that relate to:
>
> the supply of goods or services
>
> the acquisition of goods from another member state, or
>
> the importation of goods from a place outside the member state in the course of carrying on a business,
>
> "... You can appeal against his notice if you think I am not entitled to issue it. But you cannot appeal against having to give me the documents I have requested because it only relates to your statutory records ..."

18. We shall return to the contents of the schedules to the First and Second Notices later, but we note at this stage that the information and documents described as being sought were not limited as described in paragraph in the paragraph above.

19. "Statutory records" are defined by paragraph 62 to mean information or documents a person is required to keep or preserve by virtue of the Taxes Acts or other statutory provisions in relation to tax (which includes VAT). But paragraph 62 (3) provides that such information and documents cease to form part of "statutory records" when the period for which they are required to be preserved has expired.

20. Section 12B TMA requires a person who may be required to make a tax return under section 8 (for the purposes of assessing liability to income tax or capital gains tax) to preserve their records for just over six years (in the case of a person carrying on a business) or until the 31 January falling just under 21 months after the end of the relevant tax year. But if a tax return is required at a later date and the taxpayer still has

the records requisite for that return the records are required to be preserved for the period in relation to which an enquiry could be opened, made or finished.

21. The records in fact sought by Mr McDonald did not fall within the three specific headings mentioned in his letter. Nor in our view were they all statutory records - for example a bank statement which showed only personal expenditure or non-taxable income would not be required to be retained under section 12B, nor would information relating to the date the account was opened.

22. There are two possible interpretations of the paragraphs in Mr McDonald's Notices dealing with the making of an appeal. The first is that whatever he had requested in the schedules should be limited to statutory records relating to the three categories he mentions; the other is that it is an erroneous indication of a limitation of the right to appeal.

23. We do not construe the Notice along the lines of the first approach: to our minds the context of the Notice and the types of information sought make it clear that the paragraph is intended to refer only to the limitation of the right to appeal.

24. As such however it was plainly erroneous. The misleading nature of this paragraph is in our view a reason for allowing a late appeal to be made against that Notice.

25. Paragraph 32 (1) provides that any notice of such an appeal must be given to HMRC within 30 days after the date the information notice was given. Once a notice of appeal is given the provisions of the Taxes Management Act 1970 in relation to review and notification of the appeal to the tribunal generally apply (para 32(5)). If, after notice of appeal is given to HMRC, the appeal is notified to the tribunal, the tribunal is given the power to "confirm, vary or set aside" the notice or a requirement of it (para 32(3)).

26. After receiving the First Notice Ms Brantjes wrote Mr McDonald on 6 December 2016. In that letter she queried some parts of the requirements of the First Notice and indicated a desire to pursue an appeal to the tribunal. Her letter was taken (rightly) by Mr MacDonald as an appeal against the First Notice. A review was conducted, and on 31 January 2017 a review officer wrote to Ms Brantjes upholding the requirements of the First Notice and indicating that an appeal could be notified to the tribunal. Ms Brantjes did not notify her appeal to the tribunal until 22 May 2018.

27. After receiving the Second Notice (of 27 October 2017), there was further correspondence with HMRC but no immediate indication of an appeal against the requirements of that Notice. However, on 23 April 2018 in the course of an independent review in connection with an appeal against the penalties (see below) HMRC, in effect, accepted the appeal as being against the contents of the Second Notice and upheld that Notice. Their letter did not say in terms that the late appeal was accepted but, in our view, should fairly be taken as accepting the making of such an appeal but rejecting it. Ms Brantjes notified an appeal to the to the tribunal against this notice on 22 May 2017 within the 30 days after the conclusion of the review allowed for such action. We therefore consider that this appeal is before the tribunal.

28. Ms Brantjes' notice of appeal to the tribunal of 22 May 2018 included an appeal in relation to the First Notice. Mrs Adams did not (expressly) object to the tribunal hearing that appeal (and addressed both Notices). Given the (confusing) terms of the First Notice in relation to appeals and statutory records, the correspondence between the parties (which contained objections to the Notice) and the terms of the appeal made against the penalties charged by HMRC in relation to it, it seems to us just to permit the appeal to be made to the tribunal even though notified more than 30 days after 31 January 2017, and thus for the appeal to be heard.

29. As a result, this decision addresses appeals in relation to the First Notice and the Second Notice.

Appeals - (ii) against penalties.

30. Paragraph 47 provides that a person may appeal against a penalty or its amount.

31. Paragraph 48(4) provides that on an appeal against a decision as to the *amount* of any penalty the tribunal may affirm the decision or substitute for it any decision the HMRC had the power to make. In relation to the £300 penalties the officer had no discretion as to the amount of the penalty once it had been decided to charge a penalty, with the result that on an appeal the tribunal is limited to setting aside or affirming such a penalty. But in relation to the daily penalties an officer has a discretion as to what level of penalty up to £60 per day should be assessed. On an appeal against the amount of a daily penalty the tribunal may thus increase or decrease the amount of the daily penalty if it considers that one is exigible.

32. An appeal against a penalty must be made to HMRC within 30 days after the notification of the penalty, and the provisions of Part 5 TMA generally apply to the procedure on such an appeal. Part 5 TMA relevantly provides: (i) that HMRC may agree, or the tribunal may give permission, for a late appeal to be made to HMRC, and (ii) if a review is conducted by HMRC, any appeal to the tribunal must be notified within 30 days of the review unless the tribunal gives permission for late notification.

In relation to the First Notice.

(a) the £300 penalty assessed on 8 December 2017

33. Ms Brantjes made a timeous appeal to HMRC against this penalty. HMRC offered a review on 23 March 2017. Ms Brantjes neither accepted the offer nor notified an appeal to the tribunal within 30 days of the review. Section 49F TMA permits the tribunal to give permission for an appeal to be notified outside the expiry of the 30 day period.

34. There was a long meeting between HMRC and Ms Brantjes and her advisors on 27 April 2017 in the course of which mention was made of penalties; on 5 July 2017 Mr Lyons wrote asking to appeal against the Penalty Notice. HMRC replied that the late acceptance (therein implied) of the offer of review was not accepted.

35. Given the volume of the material sought by Mr McDonald and the correspondence between the parties it was understandable that the formal notification of the appeal was overlooked. It is also likely that HMRC were not in any doubt that the penalty was disputed. In the circumstances we give permission for the late appeal against this penalty.

(b) the £30 per day penalty assessed on 28 November 2017 for the period from 23 April 2017 to 27 November 2017

36. Ms Brantjes made a timely appeal to HMRC and accepted HMRC's offer of a review which was completed on 3 April 2018. She notified her appeal to the tribunal on 22 May 2018 in good time. This appeal is thus before the tribunal.

(c) £40 per day from 29 November 2017 to 7 May 2018 (issued on 8 May 2018).

37. Ms Brantjes sent no formal notice of appeal to HMRC in relation to this penalty but in an e-mail to Mr McDonald and 17 May 2018 Mr Lyons, writing on behalf of Ms Brantjes, says that it would seem to him that all the penalties should be cancelled. Ms Brantjes' appeal to the tribunal of 22 May 2018 includes an appeal against this penalty. Mr MacDonald accepted, in a letter of 18 September 2018, that the "latest penalties will be covered by the existing tribunal notices".

38. It seems to us that in the circumstances the letter of 17 May 2018 should be treated as the making of an appeal to HMRC, and in the absence of the offer of a review from HMRC, that the notification of the appeal to the tribunal was permitted by section 49A (2) TMA, so that an appeal against the penalty lies before us.

In relation to the Second Notice.

(a) The penalty of £300 issued on 8 December 2017.

39. An appeal was made to HMRC on 21 December 2017, a review was offered and accepted. Ms Brantjes notified an appeal against the penalty to the tribunal within 30 days of the result of the review. This appeal is thus before the tribunal.

(b) The daily penalty assessed on 8 May 2018.

40. No formal appeal was made to HMRC against this assessment although it is referred to in Ms Brantjes''s notice of appeal to the tribunal. But, following an email from Mr Lyons on 29 August 2018 asking whether separate appeals needed to be made, Mr McDonald, in his letter of 18 September 2018, said that the latest appeals would be covered by the existing tribunal notices.

41. In her skeleton argument Mrs Adams says that as Ms Brantjes did not appeal against this penalty to HMRC within the 30 day period, the penalty is deemed final under section 49F TMA.

42. As no review of this penalty was offered or required or made, it seems to us that section 49F is not applicable. We regard Mr Lyons' letter of 29 August 2018 as, in the

circumstances, a late appeal to HMRC, and Mr McDonald's letter of 18 September 2018 as agreement to the making of that late appeal. As a result, the appeal could be notified to the tribunal. On that basis its notification on 22 May 2018 was within the 30 days allowed by section 49G TMA.

The Appeals before the tribunal - conclusions

43. Thus the appeals to be considered by the tribunal consist of:

> (1) appeals against the requirements of the First Notice and the Second Notice;
>
> (2) appeals against the £300 daily penalty and the two daily penalties in relation to the First Notice and
>
> (3) Appeals against the £300 and the daily penalty in relation to the Second Notice.

The Evidence

44. We heard oral evidence from Mohammed Nazam, the officer who had taken over Ms Brantjes' case on the retirement of Mr McDonald. We received Mr Lyons' evidence of what his firm had done. We had a bundle of copy correspondence. This evidence was relevant to (i) the extent to which the information and documents were reasonably required by Mr McDonald, and (ii) the extent to which the Notices had been complied with. We set out in our discussion of those matters any relevant factual findings from that evidence.

The Appeals Against the Notices.

The arguments advanced on behalf of Ms Brantjes.

45. In relation to the appeals against the Notices Mr Fox argued that the Notices were deficient in a number of respects and that either individually or together those deficiencies were such that either (i) the Notices should not be considered to be notices within paragraph 1 schedule 36 or (ii) that they were such that the tribunal should set the notices aside. Further he argued that HMRC's evidence was not sufficient to support their necessary contention that the information and documents sought were reasonably required.

46. Mr Fox and Mr Lyons argued that the notices were deficient in the following 10 respects.

1. The schedules: lack of date and statutory authority

47. Mr Fox noted that the schedules setting out what was required were not dated and bore no reference to the statutory authority under which they were issued. He argued that the schedules on their own did not constitute a notice requiring information or documents and were thus not notices within paragraph 1 schedule 36.

48. We do not accept these arguments. It was clear to us that the schedules were sent and received together with the accompanying letters. Those letters were dated and said that the attached schedule showed what the writer needed; they explained that by law Ms Brantjes must let Mr McDonald have the documents for which he asked. It was clear to us that the letters must be read together with the accompanying schedules, and that, so read, they constituted notice in writing requiring the taxpayer to provide information or produce documents and were thus information notices within paragraph 1 schedule 36.

2. Time references

49. Mr Fox argued that the First Notice was defective in that the first paragraph of the schedule specified:

> "Copies of bank statements for the time period 06 April 2008 to the present day ..." [our emphasis]

and paragraph 4 contained the same words.

50. The words "present day", he said, were unclear. The same schedule had previously accompanied an earlier informal request from Mr McDonald. Was the "present day" the date of that previous request, the date of the First Notice, the date on which the First Notice was received or the date of the provision of a response?

51. The lack of clarity he said was shown by a letter from HMRC written in response to a query about the phrase in which Mr McDonald said that it meant 3 October 2016 – which was the date of the earlier informal request.

52. We reject this argument too. It is clear to us that when the schedule is read together with the letter "present day" means the date of the cover letter. Mr MacDonald in his letter misconstrued the meaning of the words he had himself used.

3. Headings

53. Mr Lyons noted that the schedule attached to the First Notice and that attached to the Second Notice bore the same heading, namely the name of the taxpayer and a case reference. That seems to us to be perfectly sensible: we could not see how, given that the schedules came with separate letters, that can affect their validity.

4. Later annotated schedules.

54. Mr Fox drew our attention to annotated versions of the two schedules sent to Ms Brantjes or her advisors by Mr McDonald. One of these indicated in which information and documents had, at the time of the Second Notice, already been supplied in response to earlier informal requests. Another indicated the position at 19 April 2018. These running summaries he said were not notices; they made the position confusing and polluted the requirement.

55. We do not consider that these annotated schedules meant that the original letters with their accompanying schedules were not notices within paragraph 1 Sch 36. However, we note that the first of the annotated schedules was sent by e-mail on the day the Second Notice was given, and indicated that a number of the items sought by that Notice had already been provided. It seems to us that while this could, momentarily, have been confusing, it did not obscure the meaning of the Notices: what had not by then been provided was required to be provided, and where provision had been made the requirement must clearly be regarded as having been satisfied.

5. Duplication.

56. Mr Fox argued that there was duplication in the Notices in the following respects:

> (1) the First Notice asked for information and documents relating to "all UK and foreign property transactions that you have been involved in ... in the last 20 years"; and
>
> (2) the Second Notice asked for a "chronological list of all addresses that you have resided at for the last 20 years ..."

57. Mr Fox said that these were, in commonsense terms, the same thing.

58. We disagree. A person may reside at an address where she does so by consent of another without acquiring any interest in the property at that address, and may cease to reside there without disposing of such an interest; a person may acquire a property without living in it and may dispose of her interest in it without changing her address. Sometimes there may be an overlap, but the two questions are quite distinct: one relates to presence the other to ownership.

59. Mr Fox says that the word "transaction" was unclear: does it mean a trading transaction or can it include a domestic transaction? We think it is clear that it includes both.

6. Co-habitees

60. Mr Fox to our attention to the requirement of the Second Notice to provide supporting narratives for the list of residences and to include details of "whether you were a tenant or cohabiting & if cohabiting the name(s) of whom you were cohabiting with." That, he says, was an objectionable and unreasonable demand.

61. We accept that information as to the name of the cohabitee is generally unlikely to assist in assessing the tax position of an individual. Mr Nazam said it could be relevant to residence status and to principal private residence relief from CGT. We could not follow that reasoning. We conclude that this requirement was unreasonable. But we do not find that it was such as to cause the whole notice to be set aside for. Rather the notice should be varied to remove that requirement.

7. Spread betting

62. Mr Fox noted that the First Notice required "documents to detail income derived from spread betting". He said betting profits fell outside income and capital gains tax: the information could not therefore have been reasonably required.

63. We disagree. Whether or not such profits were taxable would depend upon the nature (including the frequency in organisation) of this activity. It could in appropriate circumstances be a trade.

8. 20 years.

64. Mr Fox objected to the requirements of the Notices which required documents and information stretching back 20 years. He noted that at the 27 April 2070 meeting HMRC had accepted that a 16 year period in relation to properties and addresses would be sufficient and that Ms Brantjes had told him that before then she was living in tenanted accommodation. In the light of that acceptance to ask for 20 years was, he said, unreasonable.

65. We do not agree with this argument. The provision of information in relation to the extra four years was relevant to confirming Ms Brantjes' account in relation to that period.

66. However, paragraph 20 schedule 36 provides that an information notice may not require a person to produce a document more than six years old unless the notice is given with the authority of an authorised officer of HMRC. Mr Nazam was unable to provide evidence that an authorised officer had approved the 20 year period in the First Notice. We conclude that it was not approved.

67. The Notice required:

> "Information and supporting documents in relation to all UK and foreign property transactions you have been involved in ... during the last 20 years
>
> "information and supporting documentation in relation to any assets disposed of ... in the last 20 years."

68. The prohibition in paragraph 20 applies only to documents. It does not affect the ability to require the provision of information. But in relation to the provision of information it means that the parts of the requirements quoted above were unlawful.

69. In our view the Notice should not be set aside by virtue of that excessive request but should be varied by imposing a limit by amending the requirement to 6 years in relation to such documents.

9. Jacqui B limited.

70. The Second Notice required (among other requirements) information "and evidence" about Ms Brantjes' dealings with this company. It seeks the source of loans

made by her to the company, the nature of the company's business and Ms Brantjes' role in it, and an explanation of its debtors at 30 September 2009 and 31 January 2011.

71. Mr Fox says that this requirement is not reasonably made. The company, he says, was dissolved in 2013 having suffered large losses. Mr Nazam says that Ms Brantjes was the sole director and sole shareholder of this company: he said, and we accept, that large amounts had been deposited in in Swiss bank accounts in Ms Brantjes' name in the period the company had been in existence so it was reasonable for HMRC to seek information about the source of the company's funds.

72. We accept that to build up a full picture of Ms Brantjes' transactions and thus her tax position across the period from 2009 to 2013 it was reasonable to ask about the nature of the company's business and the source of its funds, but Mr Nazam did not explain why HMRC wanted to know who the cash debtors were at the relevant year ends, and, given that the company had been dissolved it seemed to us unreasonable to require details of the debtors when it was unlikely that in 2018 the relevant records existed in order to determine what they were.

73. We therefore vary the notice to exclude the requirement to provide details of the company's debtors.

74. The Second Notice was dated 27 October 2017. The 6 year limitation period in paragraph 20 applies to documents. The request, so far as it related to documents could not therefore apply to documents created before 27 October 2011 unless the requirement had been authorised by an appropriate HMRC officer. There was no evidence of such authorisation. We therefore vary the Notice to limit its ambit to documents no more than 6 years old at the date of the Notice.

10. The evidence that the requirements were reasonably required to check Ms Brantjes' tax position.

75. The notices were given by Mr McDonald who has since retired from HMRC. Mr Nazam told us, and we accept, that before Mr McDonald retired he had prepared a draft (unsigned) witness statement. Mr Nazam relied upon that statement in his evidence and incorporated much of it in his own witness statement.

76. Mr Fox argued that we should attach little weight to Mr McDonald's draft or to the parts of Mr Nazam's statement which incorporated what Mr McDonald had originally written. Mr Fox said that it should be treated as inadmissible evidence.

77. The tribunal has wide powers to admit evidence. It is not limited to admitting only such evidence as would be admissible in other proceedings (see Rule 15(2) of the tribunal's rules) and is empowered to accord to the evidence it admits such weight as it considers appropriate. It seemed to us just and fair in the circumstances to admit Mr McDonald's statement.

78. Mr McDonald's statement is in large part a history of his enquiry into Ms Brantjes' tax affairs. The parts which are relevant to the appeal against the content of the Notices consist principally of his evidence that HMRC had had notice of large deposits made

to Swiss bank accounts held by Ms Brantjes. That evidence was consistent with the notes of the meeting of 27 April 2070, the letters he had written and the evidence in copies of bank statements before us of substantial money movements in the years before 2017.

79. On the basis of all that evidence we find that HMRC had evidence of a number of substantial property transactions in which Ms Brantjes had been involved and of the deposit of substantial sums into the accounts in her name (whether her name only or that of her and another) in the 16 years or so prior to 2018. It was therefore in our view reasonable to seek to check her tax position for those years. The requirements related to the information HMRC held. Save as noted above we consider that the requests were reasonable.

Other matters

80. We noted that the First Notice was less specific than the Second Notice. The Second Notice asked for information such as the date a bank account was opened, whereas the First Notice asked for "information and supporting documentation" in relation to property transactions and asset disposals without specifying the nature of the information required - for example the nature of the asset, the circumstances of its acquisition or the date of disposal. This lack of specification could be read in two ways: either as a request for all such information or as a request for any such information. Given that the Notice was to impose a statutory obligation we do not read it as imposing a requirement for all such information but for some only.

81. Neither Mr Fox nor Mr Lyons made any complaint in relation to the time limit in the Notices.

The Appeals against the Notices – Summary of Conclusions

82. We do not find the deficiencies in the Notices asserted by Mr Fox either individually or taken together sufficient to set the notices aside. However we vary the Notices by:

(1) removing from the Second Notice the requirement to provide details of with whom Ms Brantjes' cohabited;

(2) limiting the documentation required by the First Notice to those documents created within six years before 8 November 2016;

(3) limiting the documentation required by the Second Notice to those documents created within six years before 27 October 2017; and

(4) removing the requirements of the Second Notice in relation to the debtors of Jacqui B limited.

The Appeals Against the Penalties.

83. In this section of the decision we consider (i) the submissions of Mr Fox in relation to the penalties, (ii) what constitutes a failure to comply with a notice, (iii) whether there were failures to comply, and (iv) if so what penalty was properly exigible.

(i) Mr Fox's submissions

84. Mr Fox raises the following objections in relation to the penalties. He says that:

> (1) for the reasons given in relation to the Notices, the Notices should be disregarded with the result that the penalties should fail;
>
> (2) the Notices were insufficiently clear to give rise to an obligation the failure to comply with which would give rise to a penalties;
>
> (3) there was an overlap between the documents and information required by the First and Second Notices which meant that penalties were duplicated;
>
> (4) the letters sought information in relation to Ms Brantjes' spread betting activities which could not be taxable and was not therefore reasonably required;
>
> *(5)* some of the delay in complying with the Notices was attributable to a four-month delay by HMRC in responding to clarification enquiries made by or in behalf of Ms Brantjes; and
>
> *(6)* The Notices sought information and documents in relation to residence, properties and involvement with Jacqui B limited for a period of more than six years before the Notice.

Objections (1) to (4)

85. For the reasons set out above in relation to the appeals against the Notices we reject the arguments put forward under (1) to (4) above. In relation to (2) we note our conclusion at [80] that the imprecise language of the First Notice should be construed as meaning that it imposed only a requirement to produce something fitting the relevant requirement not something comprehensive.

Objection (5) Delay.

86. On 25 May 2017 Mr McDonald wrote to Ms Brantjes with a request for further information and documents set out in a schedule. Mr Lyons wrote to Mr McDonald on 5 July 2017 with information and documents in response to this informal request, and some queries about the extent of the material required. It was not until 27 October 2017, some 3 ½ months later, that Mr McDonald replied. There was further hiatus in HMRC's letters between 14 March 2019 and 9 July 2019.

87. Mr Fox argues in effect that it is unreasonable to charge daily penalties in relation to a period where the delay is caused by, or contributed to by HMRC's own delay.

88. We accept that *if* there was an ambiguity or uncertainty ("ambiguity") in the terms of the Notices or those terms as understood in the light of discussion and correspondence between the parties, and if there was delay on the part of HMRC in responding to reasonable enquiries made for the purpose of eliminating that ambiguity, then, so far as concerns the items sought to which the ambiguity related, that would be good grounds for finding that during the period of delay the taxpayer had a reasonable excuse for her failure to provide such items. But that excuse would not extend to a

failure to provide other items which were not the subject of the ambiguity, and in relation to the items subject to the ambiguity would provide relief for failure after the period of discussion only if the items (as clarified by the correspondence) were provided reasonably promptly after the ambiguity was resolved.

89. In particular we note that the statute imposing the penalties (and to the extent it provides relief) is concerned, not with HMRC's behaviour, but with that of the taxpayer. There is no equivalent of the expression is what is sauce for the goose is sauce for the gander. If HMRC behave badly, that can afford the taxpayer relief only if and to the extent that the behaviour causes the taxpayer's failure.

90. The letter of 5 July 2017 dealt with some of the requirements of the First Notice and set out queries in relation to the informal request of 25 May 2017 which preceded the formal Second Notice. It seems to us that only those matters which could have delayed compliance with the First Notice could provide any form of relevant excuse for delayed compliance. The only items in this communication which could speak to delay were:

> (1) with regard to bank accounts, an explanation of the difficulties in obtaining missing information and statements;
>
> (2) in relation to property transaction and asset disposals, a query as to the 20 year period in the light of the writer's understanding that 16 years had been considered adequate at the meeting of 27 April 2017;
>
> (3) in relation to spread betting a question as to why information was needed (although it was said that efforts were being made to obtain the statement required from others);
>
> (4) in relation to Ms Brantjes' interest in a French hotel, the seeking of guidance on what documents Mr McDonald wanted given that there was a mountain of documents (of which 60 were supplied) available.

91. It did not seem to us that these queries highlighted any ambiguity in the terms of the First Notice. Some of them may have been relevant to whether the items were reasonably sought but they did not in our view provide any excuse for failure to comply with it. Most of the questions related to the informal request. Although that request fructified in the Second Notice later in the year, it did not seem to us that any delay in responding to the formal Second Notice could reasonably be laid at the door of any delay in responding to this letter.

Objection (6) The 20 year period.

92. Mr Fox queried the period of 20 years in the requirements of First Notice, and the requirements relating to the period before 27 October 2011 and the Second Notice in relation to Jacquie B limited.

93. We have found that, since it was not shown that the 20 year period was authorised by an authorised officer of HMRC the requirements to provide information and documents prior to 8 November 2010 in the First Notice and before 27 October 2011 in the Second Notice did not have to be complied with. That conclusion affects the

extent to which there was a failure to comply with the Notices and we address that below. Failure to comply with an unlawful requirement of the Notice is not a failure for the purposes of paragraph 39 and so may not give rise to a penalty.

(ii) What constitutes a failure?

94. There are two statutory limitations on the duty of a taxpayer to comply with an information notice. There is no duty to comply with a request which falls within those limitations. As a result, if a matter falls within them there can be no failure to comply with the notice to that extent. The two relevant limitations are the six year limitation we have discussed earlier and that in paragraph 18.

95. Paragraph 18 schedule 36 provides that an information notice only requires a person to produce a document if it is in his or her possession or power.

96. A document which did not exist when the notice was issued, which but which could be created by the taxpayer or by another at her instigation, is neither in the possession of that person nor in her power.

97. That means that if Ms Brantjes did not have certain bank statements and they did not exist in the possession of another person whom she could compel to transmit them, she could not be obliged to provide them under the Notices. In particular it means that she was not required by the Notice to require or request the provision of bank statements which she did not have and which such persons did not keep in hard copy form.

98. This limitation applies to the requirement to produce a document. It does not apply to the requirement to provide further information: a Notice could require a person to provide the information which could be obtained from a bank. But the First Notice required "bank statements" and that to our minds clearly means documents not information. As a result only those statements in her possession or in the possession of others whom she could compel to provide them need to be provided by the notice.

99. In this context we note that HMRC referred to *HMRC v Parisso* [2011] UKFTT 218 TC, a case in which the tribunal held that "power" in this context did not have the restricted meaning ascribed to it by the House of Lords in *Lonrho* [1980] 1 WLR 627 of a presently enforceable right to obtain a document without the need for any consent, but embraced the de facto ability to obtain a document. Whether or not that conclusion is correct, it relates only to documents which are, at the relevant time, in existence. If they are not in existence no power exists over them.

100. HMRC also refer to *Harrydev v HMRC* [2017] UKFTT 616 (TC) in which the tribunal held that in order to show a reasonable excuse for not providing a document the taxpayer did not have ("for example, because they do not have it at all") the taxpayer must show that they have a reasonable excuse for not having informed HMRC of that fact within the time limit".

101. We respectfully consider that this puts the cart before the horse: if the taxpayer does not have, or have power over, a document, there is no obligation to provide it and so no

failure to comply with the notice. As a result there is no need to consider whether or not there is a reasonable excuse.

102. There is one other matter which we raised with the parties. That was whether paragraph 39 could be read in the light of section 5(c) Interpretation Act 1978 (which requires the singular to be read as including the plural unless the context otherwise requires) so that it referred to failure to comply with information notice**s** rather than "an" information notice, with the result that a failure to comply with a requirement of the First Notice and a failure to comply with a requirement of the Second Notice could trigger only one penalty. In this context we asked whether, if HMRC gave three notices requiring respectively documents A, B and C and the taxpayer failed to provide them, three penalties would accrue even if, had the requirements been put in a single notice only one penalty would accrue.

103. HMRC responded that they considered that the legislation did mean in this last case that three penalties would arise, but they say that in practice three notices would not be issued at substantially the same time and if the notices were issued say a month apart the legislation rightly provided for three penalties.

104. We concluded that if section 5 required the singular to be read as including the plural in paragraph 39 it would provide for a penalty if a taxpayer failed to comply with "an information notice or information notices". In that case a failure to comply with one notice would trigger the penalty and the failure to comply with the second notice would trigger it again: there would be two failures, two applications of the section and two penalties. That construction we admit gives rise to the anomalous result described in the antepenultimate paragraph, but that issue is not before us.

105. We address in the next subsections of this decision whether, in the light of these conclusions, there were failures to comply with the Notices, whether the penalties were due and the proper amount of those penalties

(iii) The failures and the penalties

106. At our direction HMRC provided a table showing in relation to each Notice the extent to which they considered it had been complied with at each of the dates a penalty was assessed. Mr Lyons provided further submissions on this table.

107. We address below in relation to each Notice whether there was a failure to comply at the relevant dates, whether Mr Brantjes had a reasonable excuse for any failure and the amount of the penalty which is appropriate for each failure.

108. We have explained that we have no power to change the £300 penalty if it is due but that we may substitute our view for that of HMRC in relation to the amount of the daily penalties. In approaching that task we bear in mind the range in which a penalty may be set – being from 1p to £60 per day. We consider that the level of the daily penalty within this range should be set having regard to the seriousness of a failure to comply, the reasons for the lack of compliance and the efforts made by the taxpayer to comply with the Notice.

The First Notice (of 8 November 2016)

109. This required Mr Brantjes to produce by 8 December 2016:

> (1) Copies of bank statements from 6 April 2008 (now amended by this decision to 9 November 2010). to 8 November 2016 for her 23 bank accounts,
>
> (2) Information and documents in relation to all property transactions in the last 20 years (now amended by this decision to be limited in the case of documents to 6 years)
>
> (3) Information and documents relating to other assets disposals in the last 20 years (now amended by this decision to be limited in the case of documents to 6 years),
>
> (4) Document to detail income from spread betting from 6 April 2008 (now amended by this decision to 9 November 2010).

110. At the £300 penalty date (8 March 2016) none of the information or documents had been provided but within 9 days of receipt of the Notice Ms Brantjes wrote a detailed letter to Mr McDonald in which inter alia, (a) she explained the difficulty in providing information from 20 years ago, (b) asked what "possession or power " meant, (c) said she had no option other than to lodge an appeal. There was then further correspondence in which these concerns were reiterated. Eventually a meeting took place on 27 April 2017 after HMRC had cancelled one originally arranged for 11 January 2017.

111. We have found that the 20 year period should, in relation to documents, be limited to 6 years. The failure to provide documents more than 6 years old weas therefore not a failure for the purposes of Sch 36.

112. We have also found that a failure to provide a document which Ms Brantjes did not possess and which did not exist in the hands of a person she could compel to provide it was not a failure for the purposes of Sch 36.

113. We find that there was a flood at Ms Brantjes residence in January 2015 in which some of her documentary records were destroyed. But we do not find that all those relating to the period before the flood were destroyed since some such original documents were later made available to HMRC.

114. However, even excising such items from the requirements the original First Notice there was a failure between 8 November 2016 and 8 March 2017 to provide requested information and documents which were in her possession relating to the 6 year period.

115. As a result the penalty is due unless she had a reasonable excuse for the failures. We do not think that she did. Whilst she may have had serious question about the validity and extent of some of the requirements, there was some information, such as information relating to the disposal of jewellery which she could have provided and did not.

116. We have no power to vary the fixed £300 penalty, and confirm that it is due.

117. By the second £6,570 penalty date (219 days at £30 per day) some information and documents had been provided but not all those required by the First Notice (even as varied in accordance with our decision). On 5 July 2017 Mr Lyons had written to HMRC enclosing: (i) enclosing bank statements for two of the 23 bank accounts for part of the requested period and a schedule describing numerous details of those accounts, (ii) an explanation that statements for the other accounts had been irretrievably lost, (iii) a summary of property transactions in the last 16 years (which period he considered had been accepted by HMRC at the meeting), (iv) some statements in relation to spread betting for transactions between 2007 and 2008, and 2010 to 2016, stating that others were difficult to obtain, and (v) an explanation that a ring had ben sold to a Dubai dealer (without supporting documentation).

118. Again we consider only whether Ms Brantjes failed to comply with the Notice as varied by this decision, that is to say in particular as regards documents only in relation to those created after 8 November 2010 and in her possession or in existence in the hands of others whom she could compel to produce them.

119. As at 28 November 2016:

(1) Ms Brantjes had not supplied bank statements for her NatWest accounts for any period after November 2012, or for her ABN Amro account for any period after January 2014.

We have found that there was a flood in January 2015 in which some of Ms Brantjes documents were destroyed but there was no evidence before us that all had been destroyed. We accept that some bank statements were destroyed in the flood but are unable to conclude on the evidence before us that all those relevant to this request had been destroyed.

Nor did the flood provide a reason for bank statements relating to the period after January 2015 not having been provided.

There was therefore a failure to comply with the Notice to this extent.

(2) information in relation to property transactions had been provided in the form of a schedule for the preceding 16 years. Documentation relating to the transactions in the 6 year period prior to the date of the Notice had not been provided. There was no evidence that Ms Brantjes did not have such documentation in her possession or power.

(3) Information in the form of a declaration that a ring had been sold had been provided without any supporting documentation. The sale and purchase contract was provided to HMRC at a later date. Associated banking documentation showed the transaction had taken place around 7 December 2010. That fell within the 6 year period. As a result if these document were in Ms Brantjes possession or pawer she was required to provide them under the Notice. There was no evidence that they were not within her possession or power.

We conclude that there was a failure to provide these documents throughout the period to 28 November 2017.

(4) a document provided at a later date showed that Ms Brantjes had disposed of two diamonds in April 2014. No information about the sale had been provided at 28 November 2017. As a result there was a failure in this respect to comply with the Notice.

(5) documentation in relation to Spread Betting was supplied on 5 July 2017. Mr Lyons' letter of that date indicated that other statements were difficult to obtain. We accept this as evidence that they were not in Ms Brantjes' possession and had to be printed by third parties. We find therefore they were not in her power or possession and that there was no failure to provide them for the purposes of Sch 36.

120. In summary therefore there were failures to comply with the First Notice which lasted for 219 days up to 28 November 2017 and unless Ms Brantjes had a reasonable excuse a penalty is due.

121. Did Ms Brantjes have a reasonable excuse? We accept that the requirement in the Notice that 20 years' of documents were required rather than 6 years' worth may have caused Ms Brantjes and her advisors to spend time trying to obtain documents for which they would not have searched if 6 years had been specified; we also accept that they may mistakenly have spent time trying to obtain bank statements which were not in Ms Brantjes' power and so did not need to be provided. But there were failures for which no reason was offered by Mr Fox or Mr Lyons: for example the failure to provide post flood bank statements and the information in relation to the disposal of the two diamonds. We conclude that it was not shown that Ms Brantjes had a reasonable excuse for these failures. A penalty is therefore due.

122. Was £30 per day an appropriate level of penalty? The failure to provide bank statements which were in Ms Brantjes possession (or at least were not shown by evidence not to be), documents relating to property transactions and jewellery disposals in the 6 year period was unexplained, and serious. The correspondence between the parties in the period of these penalties evidence in our view a lack of urgency and a desire to argue about the reasonableness of the Notice. There were for example repeated arguments made that spread betting was not taxable so that no information should be sought in relation to it. These arguments were redolent of delaying tactics rather than a desire to comply.

123. Nevertheless some effort was made to comply. And efforts were made to obtain bank statements – efforts which in our view were not required by the Notice but nevertheless indicated a willingness to help HMRC.

124. Bearing in mind the period of delay (219 days), the information actually provided and the failures, we consider that the penalty should be £20 per day. We therefore reduce the assessment to £4,380.

125. By the third penalty assessment date (8 May 2018) (£6,400 being 160 days at £40 per day) the required information had not been provided in full, but on 19 December 2017 Mr Lyons had sent HMRC: (i) information and supporting documentation in relation to Ms Brantjes' property transactions, (ii) documentation relating to the

disposal of the ring and the two diamonds, (ii) further spread betting statements covering the period 2007 to 2012 and (iv) some further bank statements. In response Mr McDonald wrote in 2 February 2018 highlighting missing bank statements and asking further questions in relation to the property information, the jewellery and the spread betting.

126. In relation to bank statements HMRC say that:

> (1) in relation to accounts at two Swiss banks, it was not sufficient compliance with the Notice to arrange for the bank to supply the documentation directly to HMRC;
>
> (2) in relation to accounts at Coutts, the statements relevant to the period before the flood in January 2015 should have been requested form Coutts, and that statements for periods after the flood had been received by Ms Brantjes but not sent to HMRC
>
> (3) in relation to accounts at NatWest, statements for 1 April 2010 to 21 November 2012 had been sent to HMRCs but those for periods after 26 November had not been (Mr Lyons saying that they would be provided when he could get them from the bank); and
>
> (4) in relation to accounts with Van Lanschott Bank NV (2) and ABN Amro Bank NV (5), statements were provided for periods from 2008 (or before) to May 2016 at the latest, but none for the period from May 2016 to November 2016 (or October 2016, the date of the informal precursor request).

127. We have concluded that Ms Brantjes was not required by the Notice to provide copies of bank statements which she did not possess and which were not possessed by someone she could compel to produce them. As a result, we do not find that there was a failure to produce documents within her power in relation to the Swiss banks and NatWest (where we take Mr Lyons' representation as showing that Ms Brantjes did not possess these documents). But in relation to the Coutts accounts and those with the Dutch banks, there was no evidence before us that Ms Brantjes did not possess these statements and we conclude that there was a failure to produce them throughout the period to 8 May 2018.

128. In relation to the requirements to produce information and supporting documentation in relation to property transactions, Mr McDonald in his letter asked a number of follow up questions but it did not seem to us that those questions indicated that "information and supporting documents" had not been supplied. If he thought more detail needed to be provided it was open to Mr McDonald to serve a further notice with a specific request. We do not consider there to have been a failure in this regard after 19 December 2017.

129. The same is the case in relation to the ring and the diamonds.

130. In relation to the request for spread betting documents, Mr McDonald asks for confirmation that Ms Brantjes has no other documents. But it did not seem to us that

there was any indication that she had failed to provide such "documents to detail income received from spread betting in the period 9 November 2010 (not April 2008) to 8 November 2016 as were in her power or possession.

131. We conclude that in the period to 8 November 2016 it was not demonstrated that there was not a failure to comply with the Notice in respect of the Coutts and Dutch bank accounts. As a result, penalties were exigible unless Ms Brantjes had a reasonable excuse for the failure. Mr Fox offered no reason for the failure and none was apparent form the correspondence. We conclude that it was not shown that Ms Brantjes had a reasonable excuse and that penalties are therefore due.

132. This penalty related to the period 29 November 2017 to 7 May 2018. At the start of that period there were a fair number of items outstanding but Mr Lyons letter of 19 December 2017 remedied many of the failures (see above), leaving only the failures in relation to bank statements.

133. It seems to us that in the period 29 November 2017 to 19 December 2017 the penalty of £40 per day reflects a lack of compliance highlighted by the assessment of the first set of daily penalties. But thereafter the failures were fewer and less serious. For that latter period a penalty of £20 per day properly reflects the circumstances.

134. We therefore reduce the penalty assessed to £40 x 21 days + £20 x 139 days =£3,620.

The Second Notice (of 27 October 2017)

135. This was a notice with more specific requirements. Compliance required the delivery of specific information rather than just "information". It was a request for some 25 pieces of information and a few documents:

> (1) under the heading "bank account narratives for all 23 accounts" Ms Brantjes was asked for 11 pieces of information ("1(a)" to "1(k)") in relation to each account,
>
> (2) under the heading "Louis Orozco" she was asked for four pieces of information and one document in relation to her employment of Mr Orozco
>
> (3) under the heading "French Hotel" she was asked to produce information and a document about the operation of a French hotel in which she had an interest and her declarations to the French tax authorities;
>
> (4) under the heading "Jacqui B Ltd" she awas asked to provide details of the source of its funding and of the business of the company and her role in it.

136. In relation to this notice we were not shown evidence that the requirement an authorised officer to approve a request for documents more than 6 years old had been satisfied. Whilst Mr Nazam had said that he could not find such authorisation in relation to the First Notice, he did not say whether or not the same was true of this Notice.

137.This Notice , however, consists principally of requests for information which are not constrained by the 20 year rule. We have treated requests for documents as limited to those in existence after 27 October 2011.

138.At the £300 penalty date (8 December 2017), HMRC (in the schedule produced in accordance with our directions) say that at 8 December 2017 none of the requested information or documents had been produced.

139.Mr Lyons responds that:

> (i) the vast majority of the items under heading (1) were provided in the schedule sent to HMRC on 5 July 2017 – before the date of the Notice.
>
> We think that the schedule to which Mr Lyons refers is the "Preliminary List of Bank Accounts Submitted to HMRC in the Outline Disclosure", a copy of which was at pages 333 and 334 of our bundle. This does indeed provide the vast majority of the information requested;
>
> (ii) in relation to the Residences Timeline, this was covered by information given in the same letter.
>
> Although this schedule was headed "Work in Progress" and had a few gaps, it seemed that the request for this information had been substantially satisfied;

140. Mr Mc Donald wrote two letters to Ms Brantjes on 27 October 2017. On included a detailed review of compliance with the First Notice. With it Mr McDonald enclosed an annotated version of a schedule of requests which had been made informally on 25 May 2017. The second letter was the formal Second Notice of that date and appended the same schedule stripped of the annotations. In the annotated version Mr Mc Donald records that some bank account information was outstanding, 1 of the 4 items sought in relation to Mr4 Orozco was outstanding, none of the information relating ot residence or the French Hotel was outstanding but none of the requests in relation to Jacqui B had been fulfilled.

141.We conclude that, as Mr Lyons submitted in his response, the majority of the requirements of the Second Notice had been satisfied by 8 December 2017. The only proper requirements of the Notice which had not been provided were (i) some uncompleted bank account information and (ii) information about Jacqui B Ltd. We conclude that in those respects there was a failure to comply with the notice and unless Ms Brantjes has a reasonable excuse for her failure penalties are due.

142.Did Ms Brantjes have a reasonable excuse for any of these failures? So far as concerns the missing bank account information Mr Lyons' correspondence suggests that by correspondence with the banks he was trying to find the few bits of missing information. We accept that in this endeavour compliance was in hands of others whose delay could be a reasonable excuse for the failure. But as regards the information about the business of Jacqui B Ltd, Mr Fox offered no reason for why no explanation of the source of its funding or the nature of its business had been given, and Mr Lyons' letter

to HMRC merely says that since the company had been wound up and made losses they objected to providing the information. We concluded that it had not been shown that there was a reasonable excuse for the failure and accordingly that a penalty was due.

143. We have no power to change this penalty and so confirm it as £300.

144. At the Second £4,500 (150 days at £30 per day) penalty date (8 May 2018) HMRC say in their schedule that only information in relation to items 1(j) and 1(k) had been provided. In her skeleton argument, however, Ms Adams says (at [80]) that "the majority of the information in the information notice dated 27 October 2017 remained outstanding. The information outstanding related to points J and K".

145. On 19 April 2018 Mr McDonald wrote to Mr Lyons enclosing an updated version of the annotated schedule for the Second Notice showing the items he considered remained outstanding at that date. These were the following:

(1) certain entries in the bank account schedule,

(2) an explanation of how Mr Orozco was remunerated, and

(3) an explanation of the source of the funding, the debtors and the nature of the business of Jacqui B Ltd.

146. Mr Lyons did not suggest that these items had been provided but he says that a large proportion of the information sought by the Notice had been provided. In particular: almost all the bank account information had been provided, 4 out of 5 of the questions about Mr Orozco had been answered, a timeline of residences had been provided, and all the questions in relation to the French Hotel had been answered.

147. We conclude that although much of the information had been provided, there was a failure to comply with the Notice and unless Ms Brantjes had a reasonable excuse for the failure penalties are due.

148. No excuse was offered by Mr Fox for the failure to provide information in relation to Jacqui B Ltd. We find that it was not shown that there was a reasonable excuse for this failure and that penalties are therefore exigible.

149. There were, we have found, three failures during the period for which these penalties were assessed. Two were in our view fairly minor (the missing information in the bank account schedule and the narrative explanation of Mr Orozco's remuneration). But the question of the funding and activities of Jacqui B Ltd related to substantial sums of money and was not in our view minor.

150. We consider that £30 per day reflected these failures in all the circumstances, and confirm the penalties at £30 per day.

Summary Conclusions

151. In summary:

i) We vary the Notices as described in [82] above,

ii) We confirm the £300 penalties,

iii) We reduce the penalty assessed on 28 November 2017 in relation to the First Notice to £4,380

iv) We reduce the penalties assessed on 8 May 2018 in relation to the First Notice to £3,620, and

v) We confirm the penalties of £4,500 assessed on 8 May 2018 in relation to the Second Notice.

Rights of appeal

152. This document contains full findings of fact and reasons for the decisions in it.

153. There is no right of appeal against our decision in relation to the validity of the Notices.

154. In relation to the decisions in relation to the penalties and time limits, 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 07 APRIL 2020