



TC03793

Appeal number: TC/2012/04723 & TC/2012/07265

PROCEDURE – hearing in the absence of the appellant – application of the Tribunal Rules – Schedule 36 Information Notice – personal private residence – statement of worldwide assets and liabilities – whether information “reasonably required” for the purposes of checking the Appellant’s tax position – appeal against penalty – Notice varied – penalty upheld.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DANIEL PITTACK

Appellant

- and -

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

**TRIBUNAL: JUDGE ANNE REDSTON
MR RICHARD THOMAS**

Sitting in public at the Tribunal Centre, 45 Bedford Square, London on 27 June 2014

The Appellant did not appear and was not represented

Mrs Sarah Harmson, of HM Revenue and Customs’ Specialist Investigations Unit, for the Respondents

DECISION

1. On 31 May 2011 HM Revenue & Customs (“HMRC”) issued an Information Notice (“the Notice”) to Mr Pittack. On 17 February 2012 HMRC imposed a penalty for failure to comply with the Notice. Mr Pittack appealed against certain requirements in the Notice, and subsequently appealed against the penalty. The two appeals were consolidated and listed to be heard together before this Tribunal.

2. For the reasons set out in the main body of this decision, the Tribunal decided:

- (1) to hold the hearing despite Mr Pittack’s non-attendance;
- (2) to vary the requirement in the Notice as set out at paragraph 71 below; and
- (3) to confirm the penalty.

3. Mr Pittack has **one calendar month from the date of issue of this decision to comply with the Notice as varied by the Tribunal.**

15 **Mr Pittack’s non-attendance**

4. Mr Pittack did not attend the hearing. At 16.39pm on the day before the hearing he sent an email to the Tribunal saying that he was unable to attend because of illness.

5. The Tribunal first found the facts about the previous postponements of his appeals, and then considered the relevant law.

20 *The facts about previous postponements*

6. Mr Pittack’s appeal against the Notice was first listed to be heard on 11 June 2012. Mr Pittack had already notified the Tribunal that he had a heart condition. The Tribunal arranged for his appeal to be heard first, ie ahead of all other cases listed for that day.

25 7. On 3 May 2012 Mr Pittack asked for the hearing to be postponed for at least three months because of his continuing heart problems. He attached medical evidence dated 2 February 2012 from his cardiologist, advising that Mr Pittack avoid as much stress as possible as this could aggravate his underlying health problem.

30 8. On 21 May 2012 Mr Pittack informed the Tribunal that he was expecting to undergo an operation in June 2012 and it was unlikely he would be fit enough to attend a hearing in September.

35 9. On 19 July 2012 he wrote again, saying that his operation had been postponed to early September. On 23 July 2012, the Tribunal received his appeal against the penalty. On 16 October, the Tribunal Registrar directed that the appeal be stayed until 31 December 2012.

10. On 12 December 2012 Mr Pittack emailed the Tribunal about both his appeals. He said he was “still not well enough to take the inevitable strain of such hearings” and attached another letter from his cardiologist saying “we have advised him strongly that he should take every opportunity to avoid stressful situations if this is possible.”

11. On 7 May 2013, the Tribunal wrote to Mr Pittack saying that the appeals needed to be progressed, and suggesting that his appeals be decided on the papers. Attached to the letter were formal directions from the Tribunal Registrar requiring HMRC to produce documents, authorities and a Statement of Case by 7 June 2013 and directing Mr Pittack to respond in writing, along with any documents on which he intended to rely, by 7 July 2013.

12. On 21 May 2013 Mr Pittack replied, saying that even if HMRC provided their information by the deadline in the formal directions, he could “in no way guarantee” that he would be able to respond, because “I’ve no idea what my state of health will be then.”

13. On 24 May 2013, the Tribunal advised Mr Pittack that if he wanted an extension of time to comply with the directions, he needed to make an application to vary them, and the application would be considered by a judge.

14. On 2 July Mr Pittack wrote a long three page email to the Tribunal saying that his health “has deteriorated quite severely and I am really in no shape to deal with the trauma of preparing for a Tribunal hearing.” However, he did not agree that his appeals should be decided on the papers, saying “I must be present at any hearing.”

15. On 6 August 2013 HMRC wrote to the Tribunal apologising for not having met the deadline set by the directions. On 8 August 2013 Mr Pittack submitted that “as a result of this manifest failure” HMRC were now out of time and their Statement of Case should not now be admissible; he asked that his appeals be allowed by default.

16. On 12 August 2013 HMRC’s Statement of Case was received by the Tribunal and forwarded to Mr Pittack. Ms Igarashi of the Tribunals Service wrote a long and detailed letter to Mr Pittack on the same day, saying that HMRC’s case would only be automatically struck out if they had failed to comply with an “unless” order, which was not the case here. Ms Igarashi also advised Mr Pittack that:

“we cannot allow these cases just to drift and accordingly we cannot accommodate your requirement for an oral hearing if you also require such a hearing to be delayed indefinitely because of your health. These appeals must be resolved either on the basis of written representations or an oral hearing.

If you insist on an oral hearing which you are not able to attend, then you may appoint a representative to attend and make your case on your behalf...if it would assist you, we could arrange for you to give your evidence, or indeed make your representations, by telephone.”

17. On 11 September 2013 Mr Pittack asked “for just one more month’s deferral and I will commit to one of the alternatives offered by 10 October.”

18. On 10 October 2013 he wrote again, saying “it would not be at all appropriate for me to try to get involved in an ‘oral hearing by telephone’” and that he was now
5 hopeful he would be able to make “a personal appearance” but was unable to confirm this until “the middle of next month.” He asked that:

“the situation concerning any future hearing be dealt with after the middle of next month, by which time I will be that much more able to confirm how I wish to approach these appeals.”

19. On 6 November 2013, the Tribunal informed Mr Pittack that they intended to list the appeals between January and March 2014.

20. On 26 November 2013, Mr Pittack said that he had checked his medical appointments and “hope[d] to be clear towards the latter part of March 2014.”

21. On 31 December 2013, the case was listed for 26 March 2014. The letter to Mr
15 Pittack said “if you do not attend, the Tribunal may decide the matter in your absence.”

22. The day before that hearing, Mr Pittack emailed the Tribunal to say he had been taken ill and had an urgent appointment with his stomach specialist at the same time as the hearing. He ended the letter “health permitting, I will be in touch again when I
20 can.” The appeal was adjourned by the judge listed to hear the case.

23. On 9 April 2014 Mr Pittack send a further email saying that “while not ‘out of the woods’ I am no longer in the category of being an emergency case and I want to pick up any loose ends.” The hearing was relisted for 27 June 2014, the date of this hearing. The listing letter repeated the earlier warning that if Mr Pittack did not
25 attend “the Tribunal may decide the matter in your absence.”

24. As recorded earlier in this decision notice, at 16.39pm on the day before the hearing Mr Pittack contacted the Tribunal, saying that “in addition to my ongoing fragile heart condition” he was suffering from another illness and would be unable to attend the hearing.

30 *Discussion and decision*

25. We considered Rules 2 and 33 of the Tribunal (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Tribunal Rules”). Rule 33 reads as follows:

Hearings in a party's absence

35 If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal--

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

26. It was clear that Mr Pittack had been notified of the hearing. We thus considered whether it was “in the interests of justice to proceed with the hearing.” In this context we also consider Rule 2, which says that the Tribunal’s overriding objective is to “deal with cases fairly and justly” and that that this includes:

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

27. In this case, the Tribunal has, in particular, to balance (c), ensuring that the parties can participate fully in the proceedings, with (e), avoiding delay.

28. In relation to (c) we note that the requirement to ensure participation is not absolute, but is to be applied “so far as practicable.” While we do not doubt that Mr Pittack has a serious health condition, it is not practicable continually to delay the hearing of his appeals in the hope that he will one day be able to attend an oral hearing. He has been advised by the Tribunal Service that he could appoint a representative, have the case decided on the papers, or participate by telephone: all are ways of assisting him to participate in the proceedings. Mr Pittack has not accepted any of these options.

29. The requirement to avoid delay is subject to the condition that the Tribunal must be able properly to consider the issues. We had the benefit of detailed written submissions from Mr Pittack, explaining why he objected to the Notice and to the penalty. HMRC provided copies of correspondence between the parties. We were confident that the Tribunal had sufficient information and submissions for us properly to consider the issues raised by both appeals.

30. When considering Rules 2 and 33 the Tribunal must also take the other party into account. We have an obligation to deal “fairly and justly” with HMRC as well as with Mr Pittack. HMRC have statutory responsibilities for the efficient management of the tax system; repeated delays waste their time and public money.

31. The Court of Appeal has recently reminded courts and tribunals (albeit in a different context) that the interests of justice extend beyond the parties themselves. In *Chartwell Estate Agents v Fergies Properties* [2014] EWCA Civ 506, Davis LJ (with whom Sullivan LJ and Laws LJ agreed) said at [28] that the interests of justice include:

“the interests of other court users: who themselves stand to be affected in the progress of their own cases by satellite litigation, delays and adjournments occurring in other cases...”

5 32. Mr Pittack appealed against the Notice almost exactly two years ago. It is clear from the facts set out above that the Tribunals Service has already spent considerable time, care and effort in offering assistance to Mr Pittack during this two year period. As the Court of Appeal has reminded us, administrative and judicial resources are limited, and time spent on one case necessarily means that another appellant is dealt with less expeditiously.

10 33. Taking all these factors into account, we had no doubt that we should continue with the hearing.

The law and the issues

15 34. Finance Act 2008, Schedule 36 (“Sch 36”) sets out the statutory provisions which apply to information notices. The relevant paragraphs are contained in an Appendix to this decision.

35. The issues in the case are as follows:

- (1) whether conditions in Sch 36, para 21 had been met, given that Mr Pittack had filed self-assessment (“SA”) returns for the years covered by the Notice;
- 20 (2) if so, whether it was reasonable of HMRC to require Mr Pittack to provide a statement of global assets and liabilities for the purposes of checking his tax position; and
- (3) whether Mr Pittack had a reasonable excuse for not complying with the Notice, so that the £300 penalty should be set aside.

The evidence and the facts

25 36. The Tribunal was provided with the correspondence between the parties, and that between the parties and the Tribunal, as well as extracts from Mr Pittack’s 2007-08 and 2008-09 SA returns. On the basis of that evidence, we found the following facts.

30 37. At some point before the 2008-09 tax year, Mr Pittack’s company, DAP Investments Ltd, provided him with a loan. In 2008-09 £1.1m of the loan was written off by the company. Mr Pittack declared this £1.1m as dividend income in that year’s tax return.

38. Some of the income Mr Pittack received had been treated by him as non-taxable on the basis that it derived from spread betting.

35 39. In his 2007-08 return Mr Pittack claimed that three different properties had been his personal private residence (“PPR”) and that he was entitled to relief from capital gains tax on their sale.

40. HMRC opened enquiries into Mr Pittack's 2007-08 and 2008-09 tax returns. On 10 September 2010 they asked informally for certain information but Mr Pittack did not provide it. On 31 May 2011 they issued the Notice. This required Mr Pittack to produce the following documents:

5 (1) Statements for all credit and debit cards held for the period 6 April 2007 to 5 April 2009.

(2) Sale and purchase documents for 13 Park Square Mews and 3a Connaught House, including but not limited to, completion statements, mortgage applications or mortgage statements.

10 (3) Documentary evidence to support the claims made to personal private residence relief for the full period of ownership on the properties as follows:

- 13 Park Square Mews
- 3a Connaught House
- 1a Randolph Mews
- 15 • 34 Clarendon Gardens.

(4) Copies of all statements for all bank and/or building society accounts held in your name, jointly with others or any for which you had power of attorney during the period 6 April 2007 to 5 April 2009 including but not restricted to the National Westminster Bank, Weatherby's Bank and Coutts Bank.

20 41. The Notice also required him to provide the following information:

(1) Details of his involvement with Disenco Energy plc, RoK Entertainment and the French film production business.

(2) A list of worldwide assets and liabilities as at 5 April 2009

25 (3) Details of all secure facilities held in the period 6 April 2007 to 5 April 2009.

(4) Details of his purchase of a houseboat on the Thames.

42. The Notice said that the documents and information must be provided by 1 July 2011, and that if he did not comply he may have to pay a penalty of £300. Mr Pittack asked for additional time to produce the documents and on 8 July 2011 HMRC
30 extended the date to 12 August 2011. That letter warned again of a penalty if he did not comply. Mr Pittack supplied some of the requested material.

43. On 19 September 2011 HMRC wrote again, setting out the missing information and documents, and further correspondence ensued between the parties. At some point before 23 December 2011 Mr Pittack appealed to HMRC against the
35 requirements that he provide mortgage and certain other property information, and also against the requirement to provide a list of worldwide assets and liabilities. On 23 December 2011 HMRC decided to refuse the appeal and offered Mr Pittack a statutory review of that decision. On 10 January 2012 Mr Pittack accepted the offer.

44. On 20 February 2012 the HMRC review officer upheld the decision to issue the Notice and advised Mr Pittack that he had 30 days to notify his appeal to the Tribunal, which Mr Pittack did on 21 March 2012.
45. Meanwhile, on 23 December 2011, HMRC had also issued a “penalty warning letter.” This said that a penalty would be charged unless he complied with the Notice by 13 January 2012.
46. Mr Pittack responded on 12 January 2012 using his BlackBerry, saying that as he was in the middle of an appeal process in relation to the property information and the global list he assumed that the penalty warning did not apply to those items. He accepted that it would however apply to the other information that remained outstanding, namely the bank and credit card details.
47. He went on to say that the penalty warning letter had not allowed him sufficient time to comply because he was away convalescing over the holiday period. He said “at the very least I should have been given to the end of January, if not the end of the first week of February.”
48. On 19 January HMRC further extended the deadline to 3 February 2012. The remaining documents and information – including the bank and building society statements – were not provided by that deadline.
49. On 17 February HMRC issued the penalty. This was approved by an authorised officer who said:
- “I have considered the submission in light of the serious nature of the taxpayer’s current health conditions. I believe that HMRC has endeavoured to assist the taxpayer and to this end has extended the compliance dates on numerous occasions. Despite this Mr Pittack seems intent on taking a non-co-operative stance as his illness has in no way impinged on his ability to request bank statements and yet 9 months aft the Sch 36 Notice only a handful have been received. I am no longer of the view that he is co-operating and thus endorse the penalty of £300.”
50. On 29 February 2012 Mr Pittack appealed the penalty to HMRC on the grounds that HMRC had not taken sufficient account of his ill health.
51. Mr Pittack then provided the remaining outstanding information, except the requirements already appealed, namely (a) certain itemised information about his properties, and (b) the list of worldwide assets and liabilities.
52. On 19 February 2014, HMRC informed Mr Pittack that they were abandoning the requirement that he provide further property details. The first of the requirements against which Mr Pittack had appealed thus fell away.
53. As a result, the Tribunal hearing only concerned (i) the remaining requirement, namely that Mr Pittack provide a list of worldwide assets and liabilities, and (ii) the

penalty charged for failing to comply with the Notice. First, though, the Tribunal had to consider the requirements in Sch 36, para 21.

Interaction with SA returns

54. Sch 36, para 21 is set out in full in the Appendix. If a person has made an SA return, the issuance of Sch 36 Notices is prohibited by Sch 36, para 21(1). However, there are a number of exceptions to that prohibition.

55. One of the exceptions applies where the SA return is under enquiry and the enquiry has not been completed (Sch 36, para 21(4)). That is the case here. As a result, Sch 36, para 21 does not prohibit the issuance of the Notice.

10 The list of worldwide assets and liabilities – not a document?

56. Mr Pittack’s first ground of appeal against the list was that there was no such document in existence. He said:

15 “the law states that HMRC have the power to obtain information and documents – not an item that does not actually exist. In order to provide the information to HMRC I would have to create a brand new document...nowhere am I required to produce a brand new piece of paperwork so as to comply with the Notice...”

57. Mrs Harmson submitted that this was wrong as a matter of law. She said that Sch 36 para 1 makes it clear that there are two separate powers.

20 58. She also referred to the HMRC Compliance Handbook CH23240, which says:

25 ““providing information”” can be answering specific factual questions, but information can also be provided by creating a document that did not previously exist in order to conveniently provide the information required. For example, it can cover computations, calculations, analyses, translations of documents written in a foreign language, and so on.”

59. Mrs Harman said that Mr Pittack could provide the information in an alternative format – i.e., not as a document – should he so wish.

30 60. We agree with HMRC that the statute gives HMRC two powers: they can require the production of “a document” and/or require the provision of “information”. Information, as Mrs Harmson says, can be provided in a number of different ways. Normally, the easiest way to transfer information is to write it down, creating a document. But it could be transferred by direct speech at a meeting, by recording the information on a disc, or in some other way. But there is no doubt that HMRC have a power to ask Mr Pittack to provide information.

The list of worldwide assets and liabilities – reasonably required?

61. The next issue is whether the information was “reasonably required”.

Submissions of the parties

62. Mr Pittack said that the list would have “no bearing whatsoever on the completion of my tax returns.”

5 63. HMRC submitted that it was reasonable for HMRC to require this list, because Mr Pittack had foreign interests, as can be seen from some of the other requirements in the Notice, which he has complied with. They also submit that it is relevant that Mr Pittack’s lifestyle is allegedly maintained only by the loan write off together with income from spread betting, which is argued to be non-taxable.

10 64. Furthermore, Mr Pittack had made PPR claims. It was possible, given that he was known to have investments and interests overseas, that he also had property overseas. One or more of these properties might have been a residence at the relevant period. Moreover, Mr Pittack may have interests in other UK properties, and have resided there. Without a full picture of the properties which might have provided him with a “residence” HMRC were unable to reach a conclusion on Mr Pittack’s PPR
15 claims.

Discussion and decision

20 65. Mr Pittack had declared income of £1.1m from the loan write-off, and other income from spread-betting. HMRC had not put forward any evidence to indicate that this was inadequate to maintain his lifestyle, or that it was reasonable to require a list of his global assets and liabilities in order to identify either (a) assets which might have given rise to income, or (b) liabilities which might have been a drain on his lifestyle.

25 66. Mr Pittack had, however, made a number of PPR claims. Under the Taxation of Chargeable Gains Act 1992 s 222(1)(a) a PPR claim can only be made for “a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, [a person’s] only or main residence.”

30 67. It is therefore a prerequisite for the relief that the property is in fact a residence. Whether this is the case is a question of fact and degree, see *Goodwin v Curtis* (1998) 70 TC 478, a judgment of the Court of Appeal, which also decided that, to come within the relief, there must be “some assumption of permanence, some degree of continuity, some expectation of continuity.”

35 68. HMRC are enquiring into Mr Pittack’s PPR claims. In assessing the evidence provided as to the degree of permanence and continuity of Mr Pittack’s residence in the properties for which he has claimed PPR relief, we agree that it is reasonable for him to be required to provide HMRC with information about his other properties. We also find that it would be reasonable in this context for HMRC to ask for information about properties to which he had access by lease, license or otherwise.

40 69. However, the Notice asks Mr Pittack to provide a list of worldwide assets and liabilities. HMRC made no submissions to support the reasonableness of their request in relation to any assets other than property assets. They made no submissions at all in relation to liabilities.

70. We find that the requirement in the Notice that Mr Pittack provide a global list of assets and liabilities is not reasonable. It is too broad, in that it asks for assets of all types, and also asks for liabilities. It is too narrow, in that it does not consider properties which might be a residence, but which Mr Pittack might not own directly: for example, properties held via a limited company, or a third party, or which he occupies under license or with the consent of the owner. It is also limited to a single date, whereas a PPR claim may involve an assertion that the property in question was the person's residence many years ago.

71. We therefore vary requirement 2.2 of the Notice so that it reads as follows:
“The full postal address of any residential property anywhere in the world which answers to one or more of the following descriptions:

- i. residential property in which you held any legal or beneficial interest whatsoever;**
- ii. residential property which was owned by one or more companies controlled by you alone or controlled together with**
 - o your spouse or civil partner; or**
 - o any sibling, parent or grandparent; or**
 - o any company or trust in which you have an interest;**
- iii. residential property owned by trustees, where you were a settlor of the trust and/or where you are (or were) within the class of possible beneficiaries and/or where you are (or were) the life tenant;**
- iv. residential property which you occupied under license or with the consent of the owner, without payment, excluding hospitals and similar establishments.**

The above requirement applies in relation to any tax year which is relevant to the PPR claims made by you. For the purposes of this Notice, the term ‘residential property’ means a building which is, or is capable of use, as a dwelling house.”

72. Sch 36, para 32(4) allows the Tribunal to specify the date by which the information must be provided. We have considered Mr Pittack's many submissions on his state of health. However, he received the Notice in May 2011, over three years ago. Although he appealed against the requirement to provide a global list of assets and liabilities, he has had ample time to get his records together.

73. Mr Pittack must therefore comply with the Notice as varied by the Tribunal, ie as set out in the bold text at paragraph 71 above, so as to provide this information to HMRC **no later than one calendar month from the date of issue of this decision.** It is not in the interests of justice to allow any longer period.

74. In setting this time limit we have taken into account not only the fact that Mr Pittack has a long-standing serious heart condition, but also that he has a statutory

obligation to pay the correct amount of tax. HMRC's enquiries are focused on resolving that question, and there has already been considerable delay.

75. It is a matter for Mr Pittack if he chooses to instruct an accountant or other professional to assist him in meeting the legal requirement set out in the Notice as varied, either because of his ill health or to ensure that the deadline is not missed, or both.

The penalty

76. Mr Pittack appealed the £300 penalty on the grounds that "there was not actually a failure as such because all such information [bank statements, credit cards] was eventually supplied to HM Revenue & Customs." He also says that "the delay was entirely due to my ill health."

77. Mrs Harmson submits that, when the penalty was levied, Mr Pittack had not complied with requirements in the Notice relating to his bank statements and credit cards. HMRC had repeatedly extended the time limit for compliance, and in so doing had taken into account his health condition. It was only after the penalty had been issued that HMRC finally received the bank and credit card information.

Discussion and decision

78. A penalty can be levied under Sch 36 para 10(1)(a) if a person fails to comply with an information notice. There is no doubt that Mr Pittack failed to comply: sending the information after the penalty has been issued does not remove the failure or cancel the penalty.

79. Sch 36, para 45(1) states that there is no liability to a penalty if the person "satisfies...the tribunal that there is a reasonable excuse for the failure." Mr Pittack says he was unable to comply with the Notice because of his state of health.

80. The Notice was issued on 31 May 2011 and the penalty levied on 17 February 2012: a period of almost nine months. While we acknowledge that Mr Pittack had a heart condition, we do not accept that he was so unwell that throughout this long period he was unable at any point to gather together his bank statements and credit card documentation and send them to HMRC.

81. As a result we dismiss Mr Pittack's appeal and confirm the penalty of £300.

This decision and appeal rights

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

83. The Tribunal's decision in relation to the Notice is final and there is no right of appeal (Sch 36, para 32(5)).

84. Any party dissatisfied with the Tribunal’s decision to uphold the penalty 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.

5 85. 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.

10

**ANNE REDSTON
TRIBUNAL JUDGE**

15

RELEASE DATE: 9 July 2014

FINANCE ACT 2008, SCHEDULE 36

1 Power to obtain information and documents from taxpayer

- 5 (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.
- 10 (2) In this Schedule, "taxpayer notice" means a notice under this paragraph....

....

6 Notices

- 15 (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

7. Complying with notices

- 20 (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),
- 25 as is reasonably specified or described in the notice.

...

21. Taxpayer notices following tax return

- 30 (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.
- 35 (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.
- 40 (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"),
- 45 and the enquiry has not been completed.
- (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.

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

5 (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

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

(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.

15 (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).

(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.

20

....

29 Right to appeal against taxpayer notice

25 (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.

30

....

32 Procedure

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

35 (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

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

40 (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—

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

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

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

(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

5 (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
10 this Schedule is final.

(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.

15

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

20 (b)

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

....

44 Failure to comply with time limit

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
25 allowed.

30

45 Reasonable excuse

(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
35 Customs.

(2) For the purposes of this paragraph—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,

40 (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

(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
45 the excuse ceased.

...

47 Right to appeal against penalty

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

- 5 (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.

48 Procedure on appeal against penalty

- 10 (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.
- 15 (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—
 - 20 (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
- 25 Schedule as they have effect in relation to an appeal against an assessment to income tax.

49 Enforcement of penalty

- (1) A penalty under paragraph 39, 40 or 40A must be paid—
 - 30 (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
- 35 tax charged in an assessment and due and payable.

...

63 Tax

- 40 (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,
 - 45 (d) VAT, and
 - (e) insurance premium tax,
 - (f) inheritance tax,

- (g) stamp duty land tax,
 - (h) stamp duty reserve tax,
 - (i) petroleum revenue tax,
 - (j) aggregates levy,
 - 5 (k) climate change levy,
 - (l) landfill tax, and
 - (m) relevant foreign tax,
- and references to "a tax" are to be interpreted accordingly.
- (2) In this Schedule "corporation tax" includes any amount assessable or chargeable
10 as if it were corporation tax.
- (3) In this Schedule "VAT" means—
- (a) value added tax charged in accordance with VATA 1994,
 - (b) value added tax charged in accordance with the law of another member State,
and
 - 15 (c) amounts listed in sub-paragraph (3A).
- (3A) Those amounts are—
- (a) any amount that is recoverable under paragraph 5(2) of Schedule 11 to VATA
1994 (amounts shown on invoices as VAT), and
 - (b) any amount that is treated as VAT by virtue of regulations under section 54 of
20 VATA 1994 (farmers etc).
- (4) In this Schedule "relevant foreign tax" means¹—
- (a) a tax of a member State, other than the United Kingdom, which is covered by
the provisions for the exchange of information under the Directive of the Council of
the European Communities dated 19 December 1977 No 77/799/EEC (as amended
25 from time to time), and
 - (b) any tax or duty which is imposed under the law of a territory in relation to
which arrangements having effect by virtue of section 173 of FA 2006 (international
tax enforcement arrangements) have been made and which is covered by the
arrangements.
- 30

¹ Sub-paragraph 4(a) was amended with effect from 1 January 2013; this is the version which applied as at the date of the Notice.