



TC04813

Appeal number: TC/2015/02006

INCOME TAX – application for permission to appeal late – permission granted - penalties for failure to comply with information notices – was there a reasonable excuse for the failure – yes in part – appeal allowed in part – paragraph 40, Schedule 36, Finance Act 2008

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DHIREN DOSHI

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ALEKSANDER
ELIZABETH BRIDGE**

Sitting in public at Fox Court, London on 20 October 2015

The Appellant in person

Stephen Goulding, an officer of HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant, Dhiren Doshi (“Mr Doshi”), appeals against the issue by HMRC
5 of two information notices dated 21 November 2013 and 7 August 2014, and penalty
notices issued under paragraph 40, Schedule 36, Finance Act 2008 for failure to
comply with the two information notices.

2. Mr Doshi’s original notice of appeal to the Tribunal was in respect only of daily
penalties. However, following correspondence with the Tribunal, Mr Doshi informed
10 the Tribunal that he wanted to extend his appeal to the information notices, and at the
opening of the hearing, he applied for permission to appeal against the initial penalties
as well.

3. Mr Doshi appeared in person. Mr Goulding represented HMRC. We heard oral
evidence from John Rogers, an officer of HMRC, and from Mr Doshi. In addition
15 bundles of documents were placed before us. At the conclusion of the hearing we
gave directions for Mr Doshi to provide written evidence of his medical condition. In
addition to providing this evidence, Mr Doshi made additional written submissions,
and we gave HMRC an opportunity to respond to these in writing (but they did not do
so).

4. As a preliminary matter we considered whether we would give permission to
20 allow late appeals against the information notices and the initial penalties. During the
course of his submissions in relation to his late application, Mr Doshi acknowledged
that it was not unreasonable for HMRC to want to see the information requested in the
information notices, and his appeal was not against the information notices
25 themselves, but just the penalties. Mr Doshi therefore did not pursue his application
for permission to appeal against the information notices themselves, and we did not
consent to the extension of time to appeal against the information notices themselves.

5. However we granted the necessary extension of time for Mr Doshi to appeal
against the imposition of the initial penalties, and permitted him to amend his notice
30 of appeal to incorporate these matters. In granting permission, we had regard to the
fact that Mr Doshi had been ill and had undergone major surgery during the periods
under review (we deal with this in more detail in our findings of fact in relation to the
substantive appeal). We also took account of the fact that allowing Mr Doshi to
amend his notice of appeal to extend to the initial penalties would not require the
35 Tribunal to consider any additional evidence. Nor were there any issues of fact or law
raised by the amendment for which Mr Goulding would not be prepared. Finally and
critically, we noted Mr Doshi’s submission that if the initial penalties had been
improperly imposed (because he had a reasonable excuse for his failures at the time),
then the daily penalties must automatically fall (on the basis that daily penalties can
40 only be imposed after the lawful imposition of an initial penalty) – and we would
therefore have to consider the lawfulness of the daily penalties in any event.

Background Facts

6. We find the background facts to be as follows:

7. The appeal relates to the unincorporated business known as “Doshi & Co”. Immediately prior to the events described below, this was a trading name adopted by Shipla Doshi (“Mrs Doshi”), the wife of Mr Doshi.

5 8. Mr and Mrs Doshi split their time between the UK and India, and have homes in both countries.

9. Doshi & Co provided accountancy services to various small businesses (typically small shopkeepers). Various “consultants” referred clients to Doshi & Co. In turn, Doshi & Co outsourced the actual preparation of the accounts to Doshi Accounting Services Private Limited (“DAS”), a company incorporated and trading in
10 India, whose shares were owned by Mrs Doshi. Around August 2005, Mrs Doshi transferred ownership of the shares in DAS to Mr Doshi, and in November 2005 she transferred the business of Doshi & Co to him.

10. On 23 December 2005 Mrs Doshi was adjudicated bankrupt, and Mr Goldfarb (a partner in the firm of Griffins) was appointed as her trustee in bankruptcy.

15 11. On 13 February 2006, there was a meeting at Mr Doshi’s office, at which Mr Goldfarb’s representative (Mr Hunt) and his solicitors asserted that the sale of the business and of the shares by Mrs Doshi to Mr Doshi was at an undervalue and void. They stated that they would take over the business unless an offer was made for the business that was acceptable to them. Handwritten heads of agreement were prepared
20 by Mr Goldfarb’s solicitors for the sale of the business to Mr Veer Doshi (Mr Doshi’s son) for £200,000 and were signed by the parties (or by Mr Goldfarb’s solicitors on his behalf). We note that these heads of agreement were not expressed to be “subject to contract”, and so on their face would appear to be legally binding. Apparently on the following day it was agreed that the heads be varied to allow Mr Doshi to
25 purchase the business. The amended heads of agreement were never signed. Mr Doshi borrowed £200,000 from clients and paid this to Mr Goldfarb in instalments from 23 February 2013 to 31 March 2013 as consideration for the purchase. In addition, Mr Doshi told us that he paid for the DAS shares by deduction from his salary, although we have no evidence before us that indicates that funds were paid in
30 respect of the DAS shares. In any event, no written agreement (other than the heads of agreement) for the purchase of the business or of the shares was ever concluded, and no formal transfer of the assets of the business or of the shares in DAS was ever executed by Mr Goldfarb. The heads of agreement are silent as to when the sale was intended to take effect (although there is a statement in the heads that Mr Veer Doshi
35 assumes responsibility for all current and future debts of the business, and that completion of the sale will take place when the final instalment of the purchase price is paid). Mr Doshi told us that the sale was intended to be effective from 1 April 2006, but in the correspondence placed before us, Mr Goldfarb states in a letter to HMRC that the sale was intended to be effective from the date of the bankruptcy, and
40 that he adopts no liability in relation to any tax due in respect of the business from the date of the bankruptcy order (23 December 2005).

12. Mr Doshi commenced proceedings in the High Court for an order declaring that he is the owner of the business assets and the DAS shares – but these petered out, and

have not been pursued. We note also that no action has been taken by Mr Goldfarb against Mr Doshi for recovery of the business assets or its profits. Mr Doshi told us that DAS became dormant no later than 1 April 2012.

13. Mr Doshi's position at the appeal hearing was that as the business of Doshi & Co was never formally transferred to him, he managed the business on behalf of Mr Goldfarb, and paid himself a salary for acting as manager. To the extent that any tax has to be paid on behalf of the business (for example PAYE or VAT), this is an obligation that falls on Mr Goldfarb and not on him. In correspondence with one of Mr Rogers colleagues, a Mr Foster of Griffins states that Mr Doshi was never an employee of Mr Goldfarb, and that Mr Doshi has been in control of the business and running it since the transfer to him from Mrs Doshi in November 2005, and that was maintained throughout the bankruptcy and the settlement meeting on 13 February 2006 and seamlessly thereafter.

14. We find that the actions of Mr Doshi and Mr Goldfarb are inconsistent with Mr Doshi acting as an employee, managing the business of Doshi & Co on behalf of Mr Goldfarb. Indeed, Mr Doshi's litigation before the High Court is for a declaration confirming that he has been the owner of the business since 1 April 2006 – and he cannot pursue this claim in one forum (the High Court) yet at the same time assert in another forum (this Tribunal) that he is an employee of the business. We note that Mr Doshi has never accounted to Mr Goldfarb for the profits of the business - on the evidence before us Mr Doshi has a single UK bank account which he uses both for the business and his personal affairs, and co-mingles the income from the business with his personal money, and treats the funds of the business as his own. In his submissions, Mr Doshi stated that there was no monthly payroll, with monthly salary slips or tax deductions. We also note that Mr Goldfarb has taken no action to assert ownership of the assets of the business and its income for the benefit of Mrs Doshi's creditors. In correspondence with Mr Rogers, Mr Goldfarb states that despite the absence of any formal contract, he has been advised that the goodwill of the business was purchased by Mr Doshi, and that "Mr Doshi has retained command and control of the business throughout, and has consistently derived the benefit of the business". The actions of both Mr Doshi and Mr Goldfarb are consistent with the Doshi & Co business having been transferred to Mr Doshi by an unwritten agreement evidenced by the conduct of the parties (including payment of £200,000). Although we acknowledge that there may have been a genuine dispute as to the ownership of the Doshi & Co business for a period immediately after payment for the business was made by Mr Doshi, by November 2013 (when the first information notice was issued), it was clear that Mr Goldfarb had retained the purchase price and was not asserting any rights of ownership in respect of the business. Indeed, by the time the information notices were issued, more than seven years had elapsed since Mr Doshi paid Mr Goldfarb for the business, and many of the possible actions that Mr Goldfarb might have to assert ownership over the business and its assets would be time barred under the Limitation Act 1980. To the extent that ownership of the Doshi & Co business is relevant to this decision, we find that it was owned by Mr Doshi from at least 1 April 2006, and possibly since November 2005.

15. Whether the shares in DAS were acquired Mr Doshi is a separate matter. We do not need to make any findings as to the ownership of the DAS shares for the purpose of this appeal, and we therefore make no findings in this regard.

16. In January 2012 Mr Rogers opened an enquiry into Mr Doshi's tax return for 2009/10 and a notice to that effect was sent to Mr Doshi on 16 January 2012. The sole income returned on the 2009/10 tax return was income from self-employment from an accountancy practice trading as "Doshi & Co". Mr Doshi had indicated on his return that he had included estimated figures, and Mr Rogers opened the enquiry to obtain final figures, together with a set of accounts and a balance sheet for the business. Subsequently Mr Rogers opened enquiries into Mr Doshi's income tax returns for 2011/12, 2012/13 and 2013/14.

17. At around December 2012, two sets of VAT returns were filed with HMRC Southampton in respect of the Doshi & Co business - one showing Mr Doshi as owner, and the other showing Mr Goldfarb (as trustee in bankruptcy for Mrs Doshi) as owner. Similarly HMRC were sent two sets of P35s in respect of PAYE incurred by the business, one under Mr Doshi as owner and the other under Mr Goldfarb (as trustee in bankruptcy for Mrs Doshi) as owner.

18. In early March 2013, Mr Doshi filed amendments to his tax returns for the five years ended 5 April 2011. The amendments removed the self-employment income originally shown on those returns, and substituted employment income. The tax return for 2009/10 showed the employer as being Mr Goldfarb. As regards the 2011/12 return, this originally showed Mr Doshi as being employed by Shipla Doshi t/a Doshi & Co, but this was subsequently amended to show the employer as being Mr Goldfarb, and then a further amendment changed the employer to Doshi & Co. Although these amendments were filed at the beginning of March, they did not come to the attention of Mr Rogers until after his meeting with Mr Doshi on 13 March 2013 (as to which see below).

19. On 13 March 2013, Mr Rogers and Mrs Bush (an HMRC officer undertaking a VAT enquiry into Doshi & Co), met Mr Doshi and his son, Dhruv Doshi. On 9 April 2013, Mr Rogers wrote to Mr Doshi enclosing notes of the meeting, and a schedule of information and documents that Mr Rogers had asked for during the course of the meeting. In consequence of the amendments to his tax returns, Mr Rogers also requested records showing how Mr Doshi had ascertained the gross amount of his employment income, and how the tax deducted had been calculated. Mr Rogers asked that Mr Doshi respond by 29 April 2012 if there were any corrections to be made to the notes of meeting, and that Mr Doshi provide the information and documents requested by 1 May 2013.

20. In accordance with a written authorisation provided by Mr Doshi, on 10 April 2013 Mr Rogers wrote to Mr Goldfarb and Bolt Burden (Mr Doshi's then solicitors), with a request for information and documents relating to the dispute about the ownership of the Doshi & Co business. Bolt Burden informed Mr Rogers that they no longer acted for Mr Doshi. Despite numerous telephone messages left with Griffins (Mr Goldfarb's firm), Mr Rogers received no response from them. On 21 November

2013, Mr Rogers wrote to Mr Doshi asking his consent to the issue of a notice under paragraph 3, Schedule 36, Finance Act 2008 requiring Mr Goldfarb to provide information relating, amongst other things, to the purchase of the Doshi & Co business by Mr Doshi.

5 21. As Mr Rogers had received no response from Mr Doshi to the 9 April 2013 letter, on 21 November 2013 Mr Rogers also issued a notice to Mr Doshi under paragraph 1, Schedule 36, Finance Act 2008 requiring him to produce or provide the information originally requested to the extent that it related to Mr Doshi's tax return for 2009/10 by 23 December 2013.

10 22. The information and documents required by the information notice included:

(1) Records for the year ended 5 April 2010 from which it was ascertained the amount of employment income paid to Mr Doshi, the tax deducted, and how this had been accounted to HMRC.

(2) A brochure for DAS

15 (3) Copies of all written contracts between Dhiren Doshi t/a Doshi & Co and DAS in force for the year ended 31 March 2012

(4) A schedule of clients from whom capital was borrowed in order to pay £200,000 to Mr Goldfarb

20 (5) Heads of Agreement relating to the purchase of the Doshi & Co business from Mr Goldfarb as trustee in bankruptcy.

23. At a much later date, Mr Rogers became aware that the Heads of Agreement document was more than 6 years old, and under HMRC procedures, he should not have included it within the information notice without the approval of a more senior officer. During the course of giving evidence, Mr Rogers acknowledged that he ought to have been aware of the age of the document, as it was mentioned at the meeting in
25 March 2013. Nonetheless, Mr Rogers considered that he needed to see the document, and if he had been aware of its age, he would have sought the internal HMRC approval. We note that there is nothing on the face of the legislation that requires the approval of a senior HMRC officer for the issue of an information notice in respect of
30 documents over 6 years old. We therefore find that the information notice was validly issued in respect of all the documents and information sought. If there is any question relating to the inclusion of the Heads of Agreement in the information notice, it is solely a matter of internal HMRC management, and not an issue for this Tribunal.

35 24. Mr Doshi did not appeal against the information notice within 30 days of it being issued.

25. During the course of the hearing it became apparent that at the time the information notice was issued, DAS had become dormant, and the brochure sought under the information notice did not exist. In consequence, the request for this brochure was not pursued by HMRC.

26. From around October 2013, Mr Doshi started to have difficulties breathing when climbing steps and walking. He visited India in December 2013 and returned in January 2014.

5 27. Mr Rogers telephoned Mr Doshi's office on 14, 20 and 21 January 2014, but on each occasion was told that Mr Doshi was busy in a meeting. Mr Doshi did not return Mr Rogers' calls. On 24 January 2014, Mr Rogers received a fax message stating that all documents had been provided to Mrs Bush. Mr Doshi did not comment on the provision of an information notice to the trustee in bankruptcy.

10 28. In February 2014, Mr Doshi was again in India, and had various diagnostic tests, including an angiogram at the Baroda Heart Institute, that showed that he had three blockages in blood vessels in his heart. On 5 March 2014 he had a triple bypass operation at the London Bridge Hospital. He was told to rest by his doctor for three months, but as he was feeling well, he went into the office after three weeks. He spent two hours in the office, but as he was feeling unwell he went home. He stayed
15 at home resting until May 2014, from which time he worked for 3 hours per day, and only resumed working full-time from the end of July 2014.

29. As the documents listed in the information notice had not been provided to Mr Rogers, and Mr Rogers had been unable to discuss matters with Mr Doshi, Mr Rogers arranged for a penalty notice for £300 to be issued on 24 March 2014 for the failure to
20 comply with the information notice. No appeal was lodged against the penalty notice within the statutory time limit.

30. Mr Rogers telephoned Mr Doshi's office on 29 April but was unable to speak to Mr Doshi. On 30 April, someone from the office telephoned Mr Rogers to say that Mr Doshi had left work that day on sick leave. Mr Rogers was told that Mr Doshi had
25 had an operation two to three months previously. On 7 May 2014 Mr Rogers wrote again to Mr Doshi to remind him of the missing information and documents, and stating that Mrs Bush had confirmed that she did not have these, and warning that further penalties would be levied if there was no reply by 21 May 2014. By a letter dated 28 May 2014, Mr Doshi replied to Mr Rogers stating that all the records were
30 with Mrs Bush, and telling Mr Rogers that he had had surgery on 5 March 2014. Mr Rogers replied on 18 June 2014, re-iterating that the requested documents and information were not with Mrs Bush. A further penalty notice for £3,240 was issued on 20 June 2014 for Mr Doshi's continued failure to comply with the information notice.

35 31. We asked Mr Doshi why he did not tell Mr Rogers until 29 May 2014 of the serious nature of his operation, and that he was initially away from work recuperating, and then only working part-time until July 2014. Mr Doshi told us that he was reluctant to tell Mr Rogers about the state of his health, as he thought that it would be seen as a sign of weakness. Mr Rogers told us in the course of his evidence that when
40 he called Mr Doshi's office in April, every indication was that Mr Doshi was back at work, and had been at work for a while. Mr Rogers had looked up the recovery time for heart surgery on the internet, and that suggested an average recovery time of 6 weeks. As the person he spoke to in Mr Doshi's office had said that he was in the

office, he assumed that he was now back at work. Mr Rogers had asked that Mr Doshi call him, but he did not.

32. On 14 July 2014, Mr Doshi wrote to Mr Rogers requesting an independent review of the penalty notices. With the letter was enclosed the written contract with DAS (one of the documents requested in the information notice), but Mr Doshi again stated that all of the documents relating to the Doshi & Co business had been provided to Mrs Bush. Mr Rogers treated the letter as notice of appeal against the penalties, and on 4 August 2014 wrote to Mr Doshi to confirm this, and to set out the decision before referring it for review. Mr Rogers also confirmed which items requested in the 21 November 2013 information notice remained outstanding, and providing Mr Doshi with a list of all records held by Mrs Bush.

33. By letter to Mr Doshi dated 9 September 2014, the decision to charge penalties was upheld on review. As Mr Rogers received no further communication from Mr Doshi, he arranged for a further penalty notice for £6,400 to be issued on 27 November 2014.

34. Mr Doshi wrote on 8 December 2014 to Mr Rogers requesting a review of the £6400 penalty. In the letter, Mr Doshi stated that he had written to the review officer on 1 September and to Mr Rogers on 15 September. As Mr Rogers had not received the letter of 15 September, he wrote to Mr Doshi on 2 January 2015 to state that he was treating Mr Doshi's letter as notice of appeal against the penalty, and to set out his decision before referring it to the reviewer.

35. On 7 August 2014, Mr Rogers sent Mr Doshi an updated list of documents held by Mrs Bush.

36. On 17 June 2014 Mr Rogers sent Mr Doshi a further information notice, but as this contained typographical errors, it was cancelled and a replacement notice was issued on 7 August 2014 under paragraph 1, Schedule 36, Finance Act 2008 in respect of information and documents relating to Mr Doshi's tax returns for 2011/12 and 2012/13, requiring the documents and information to be provided by 12 September 2014. The documents and information required included:

(1) Records for the year ended 5 April 2012 from which it was ascertained the amount of employment income paid to Mr Doshi, the tax deducted, and how this had been accounted to HMRC.

(2) Statements for all bank and building society accounts for the year ended 5 April 2012 (other than for a specified account from 6 April 2011 to 22 November 2011)

(3) Records for the year ended 5 April 2013 from which it was ascertained the amount of employment income paid to Mr Doshi, the tax deducted, and how this had been accounted to HMRC.

(4) Statements for all bank and building society accounts for the year ended 5 April 2012 (other than for a specified account from 7-11 October 2012 and 1 January 2013 to 5 April 2013)

37. No appeal against the notice had been received within 30 days of the issue of the notice, and the documents and information were not provided by Mr Doshi. On 21 October 2014 a penalty notice for an initial penalty of £300 was issued to Mr Doshi. As the documents and information continued to be outstanding, a further
5 penalty notice for £2040 was issued on 12 December 2014. Mr Doshi wrote to Mr Rogers requesting a review on 22 December 2014. On 8 January 2015 Mr Rogers wrote to Mr Doshi stating that he was treating the letter as a notice of appeal against the penalty of £2040, and setting out the decision before referring it to the review officer.

10 **The Law**

38. Under paragraph 1(1), Schedule 36, Finance Act 2008 (“Schedule 36”):

(1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)-

(a) to produce information, or

15 (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.

39. Paragraph 18 of Schedule 36 provides that an information notice only requires a person to produce a document if it is in that person’s possession or power.

20 40. Paragraphs 39 and 40 of Schedule 36 provide for a penalties where a person fails to comply with an information notice:

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

25 (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under Part 2 of this Schedule that has been approved by the tribunal.

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

30 (3) The reference in this paragraph to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43.

40 Daily default penalties for failure to comply or obstruction

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

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

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41. Paragraph 45 of Schedule 36, addresses reasonable excuses:

- 5 (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
- 10 (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 the excuse
- 15 ceased.

Submissions

42. In essence, Mr Doshi had two grounds for his appeal. The first was that he had provided all of the documents and information requested to HMRC. The second was that to the extent that there was any failure to comply with the information notice, he had a reasonable excuse for the failure.

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43. During the course of the appeal hearing we went through each of the items listed in the two information notices.

44. As regards the records evidencing the income paid to Mr Doshi, the tax deducted and how this had been accounted for to HMRC (which were sought for various years by both information notices), Mr Doshi told us that the only records that he had were the P35s, and that these (or rather copies in the form of P14s) had been sent to HMRC in Newcastle following the end of each tax year. Mr Rogers told us that the P35s were not what he was asking for. He required statutory records of the Doshi & Co business that would enable him to reconcile the entries on Mr Doshi's personal tax returns with the PAYE returns filed by the business. That this is what Mr Rogers required was apparent on the face of the information notice – for example in relation to the request for the 2012/13 tax year, the notice states “A copy of forms P35 (indicating the employer as Kevin Goldfarb as trustee of Shipla Doshi t/a Doshi) and P60 for yourself are held, but the records required should also include a detailed analysis of how the entries in your return for your gross pay and the tax deducted thereon have been arrived at together with a reconciliation of this to the relevant entries on your bank statements”. We were referred by Mr Goulding to HMRC's record of the PAYE returns made by the Doshi & Co business, some of which showed Mr Doshi as an employee, and some which did not. As regards the PAYE returns submitted in respect of Mr Doshi's employment, it is apparent that he was only included in the filings at the end of the tax year, and it is therefore not possible to reconcile his pay with any monthly figures. On any basis it was not possible for Mr

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Rogers on the basis of the records to which he had access to reconcile the entries in Mr Doshi's personal tax returns with the amounts shown on the business's PAYE returns.

45. Of course, we have found that the Doshi & Co business was in fact owned by Mr Doshi since at least April 2006, and therefore he was the sole proprietor of the business and not its employee. So he should not in fact have been treating his drawings as earnings, and should not have been deducting and accounting for PAYE and NICs in respect of his income from the business. But as Mr Doshi had filed returns (both his own self-assessment and employer returns in respect of Doshi & Co) showing on their face that he was an employee, and showing that PAYE had been deducted and paid to HMRC, it was entirely right for Mr Rogers to ask for further details about the amount of earnings, the calculation of the tax withheld, and how that tax was paid to HMRC, and Mr Doshi should have provided the information sought.

46. As regards written contracts between Doshi & Co and DAS, Mr Doshi told us that there were originally no such written agreements, however from November 2006 written agreements were put in place in order to meet transfer pricing obligations, and these agreements were reviewed and renewed each year. Mr Doshi told us that the agreements were kept in his flat in India. He had visited his flat in India in October 2013, but he told us that he was feeling unwell, and his mind was not on paperwork. Mr Doshi acknowledged, when questioned, that he had visited his flat in India in December 2013 and February 2014, and there was no particular reason why he could not have brought the agreements back with him when he returned from those visits. He brought the documents back to the UK in June 2014 after another visit. The copies were provided to HMRC on 14 July 2014.

47. As regards the schedule of clients who lent Mr Doshi the £200,000, Mr Doshi told us that the only record that he had of the lenders was a manual ledger which had been sent to Mrs Bush for her VAT enquiry. Mr Doshi told us that there was no record of the lenders on the business's computerised accounting system. Apparently the lenders were all small shopkeepers who made the loans by cheque, and who were repaid by cheque within one year. Some of the lenders charged interest at 1% per month, but others charged no interest. The lenders were known to the consultants who introduced them to the business, but not known to Mr Doshi, and effectively repayment of the loans was guaranteed by the consultant.

48. We do not find Mr Doshi's assertion that there was no record of the lenders available through his firm's computerised accounting system credible (and Mr Doshi acknowledged in the course of giving evidence, that the Doshi & Co business used the IRIS computerised accounting system). During the course of his evidence, Mr Doshi stated that the monies were received by cheque from the various lenders, and were repaid by cheque by the business. Even if cheques were deposited in blocks, computerised accounting systems maintain records of individual cheques paid, not least so that the business can undertake regular bank reconciliations. So it would be possible for Mr Doshi to retrieve details of the lenders from the business's accounting system.

49. As regards the Heads of Agreement, Mr Doshi acknowledged in the course of giving evidence that he had a copy of the Heads of Agreement, and should have sent it to Mr Rogers. The reason he did not send it was because he was irritated by HMRC's demands.

5 50. As regards the bank and building society statements, Mr Doshi's oral evidence was that these had been provided to Mrs Bush. The evidence of Mr Rogers was that although some bank statements had been provided to Mrs Bush, these were not complete. Mr Doshi says that if some statements are missing, it is because HMRC must have lost them. Mr Rogers stated that there was no record of HMRC ever having received these statements, and referred us to his correspondence with Mr Doshi, and in particular to the schedules prepared by Mrs Bush which were sent to Mr Doshi and which showed the documents that were in her possession (and therefore Mr Doshi could see which records were missing). We have no hesitation in preferring the documentary evidence and the oral evidence of Mr Rogers to that of Mr Doshi, and find that Mr Doshi had not provided all of the bank statements listed in the information notice.

Reasonable Excuse

51. To the extent that there were any failures in compliance with the information notices, Mr Doshi submits that he had a reasonable excuse for those failures because of his medical condition.

52. We are satisfied on the basis of the evidence before us that Mr Doshi was diagnosed with a serious heart condition when he visited India in February 2014. He had major surgery at the beginning of March 2014. We are satisfied that Mr Doshi was in no fit state to attend to business matters (including responding to the information notices) from the beginning of February 2014 until he returned to work (on a part time basis) in May 2014 (we note that he wrote to HMRC on 28 May 2014, so would have been able to deal with correspondence by then). To the extent that there were failures in compliance with the information notices for this period, we are satisfied that Mr Dosh had a reasonable excuse for these failures (and so find).

53. Although Mr Doshi told us that he was feeling ill in October 2013, he was not so ill as to be unable to attend to the business, and we are not satisfied that his illness was such that he was unable to attend to business matters at that time (and so find).

54. We also find that the fact that many of the business records of Doshi & Co had been sent to Mrs Rogers or to HMRC Newcastle does not provide Mr Doshi with a reasonable excuse for his failure to provide to Mr Rogers the information and documents listed in the information notices.

55. Mr Doshi admitted that he had copies of the various agreements with DAS at his flat in India, and that he had a copy of the Heads of Agreement. The copies of the various DAS agreements could have been brought back with him to the UK following one of his many trips there prior to his operation, and this need not have waited until June 2014. It would appear that the Heads of Agreement were not provided to Mr Rogers out of pique.

56. Provision of the P35 PAYE returns to HMRC Newcastle in accordance with normal end-of-year procedures does not on any basis meet the requirements of the information notices. It is clear from the face of the notices that what was required by Mr Rogers was an explanation of how the PAYE was calculated and paid to HMRC, and the records sent to Mrs Bush were not relevant to this.

57. Finally, as regards the bank statements, we are satisfied that the bank statements in question were never received by HMRC, and so find.

Other issues

58. It is convenient at this point to address other issues raised during the course of the hearing.

Ownership

59. The first relates to the disputed ownership of the Doshi & Co business. Although a claim had been issued in the High Court for a declaration to resolve the ownership of the Doshi & Co business and the DAS shares, the litigation has fallen into abeyance and is not being pursued. It is clear from the conduct of the parties that both Mr Goldfarb and Mr Doshi have at all times acted on the basis that the Doshi & Co business is owned by Mr Doshi, and we have so found.

60. But even if there continued to be a genuine dispute about the ownership of the business, the existence of such dispute is irrelevant to Mr Doshi's failure to comply with the information notices. If Mr Doshi genuinely believed that he was an employee of Mr Goldfarb, and (in his capacity as Mr Goldfarb's manager) been paying himself as such, he would be able to provide a breakdown of his salary payments and the tax and other amounts withheld.

61. Under the self-assessment system, Mr Doshi has to decide whether he is self-employed or an employee, and file his tax returns consistently with that decision – it is not open to him to file two sets of returns on different bases – and leave the choice as to which one is correct to HMRC. He is in possession of all the relevant information to make any decision as to which is the right basis, and he must make the choice. We appreciate that there will be cases at the margin where a taxpayer may make a choice which is later found to be wrong. But providing the taxpayer's filing decision was made after careful consideration of all the relevant facts and circumstances, he will not be liable for penalties for filing on an incorrect basis.

PAYE appeal

62. We were referred by the parties to reasoned directions given by Judge Gort in the case of *Dhiren Doshi t/a Doshi & Co v HMRC* (reference TC/2011/03457 released 10 February 2012). That appeal related to a decision by HMRC that Mr Doshi was personally liable to account for PAYE in his capacity as the "payer" of earnings to employees of Doshi & Co. From the decision, it would appear that the appeal was proceeding in parallel with a review by HMRC of their decision. HMRC applied to strike out the appeal, and the directions given by Judge Gort dismissed HMRC's application on the basis that it was premature, and should await the conclusion of their review. Judge Gort also criticised HMRC in relation to submissions made by them as

to the existence of determinations under Regulation 80 of the PAYE Regulations. We note that Judge Gort made no findings as to the ownership of the Doshi & Co business, merely noting that this question was the subject of litigation before the High Court. We find that Judge Gort's decision is of no relevance to the issues before us. (We note that we were referred only to Judge Gort's directions, and not to the final appeal decision. We sought to retrieve the Tribunal's file for this appeal from the Tribunal's archives, but it appears that in accordance with the Tribunal's usual practice, the file has been destroyed. There is no record of a final decision having been published).

10 *Agreements with DAS*

63. As regards the provision of the agreements with DAS (which were eventually provided on 14 July 2014), Mr Doshi seeks to draw a distinction between the request in the information notice (which was for agreements between DAS and Mr Doshi t/a Doshi & Co in force for the tax year 2009/10) and the actual agreements (which were with Doshi & Co, but with no reference on the face of the contracts as to who was principal behind the trading name). Mr Doshi submits that there were no agreements with himself t/a Doshi & Co, rather the agreements were with Doshi & Co. This is a distinction without a difference, as Doshi & Co is merely a trading name, and is sophistry on the part of Mr Doshi. Mr Doshi knew exactly what was being requested, and his fine distinction is without any merit.

Provision of information to other departments within HMRC

64. Mr Doshi also makes great play of the information or documents sought by the information notices having been provided to HMRC officers or departments (other than Mr Rogers), or that Mr Rogers would have been aware of the facts sought from the documents or information requested as a result of other information provided to him. The fact that other officers or departments may have information or documents does not absolve the person to whom the notice is given from providing the information or documents requested in the manner specified in the notice and to the HMRC officer specified in the notice. We appreciate that this may mean that some documents or information are provided several times to different parts of HMRC, but unfortunately this is unavoidable, not least because on some occasions (and this is one of them), the reason for the request is in order to attempt to reconcile ambiguous or inconsistent returns.

65. But in any event, in this case we are satisfied (and have found) that the documents provided to the other HMRC officers and departments were not the ones requested in the information notices.

Conclusions

66. We are satisfied that both of the information notices were properly issued.

67. We are satisfied that Mr Doshi failed to comply with both of the information notices, and that failure is continuing as at the date of the hearing of this appeal. On the basis of the evidence before us, Mr Doshi has still not provided information

relating to the ascertainment of his salary and deduction of tax, the schedule of lenders, and a complete set of bank statements.

68. The first information notice was issued on 21 November 2013, and Mr Doshi neither appealed against the notice within the statutory time limit nor sought any extension of time for compliance with it. Mr Doshi does not dispute that he failed to provide all of the information and documents sought by the notice (ignoring the DAS brochure) within the time limit specified in the notice. As the time limit expired before Mr Doshi's operation, we find that he had no reasonable excuse for his failure to provide the information sought, and we uphold the initial penalty of £300.

69. As regards the daily penalties, £3240 was charged for the period from 25 March 2014 to 13 June 2014 (at a daily rate of £40), and £6400 was charged for the period from 14 June 2014 to 20 November 2014 (at a daily rate of £40). We are satisfied that Mr Doshi had a reasonable excuse for his failure to comply with the information notice for the period from 25 March to 27 May, and we allow his appeal in respect of the daily penalties for this period. We dismiss his appeal and uphold the balance of the daily penalties.

70. The second information notice was issued on 7 August 2014, and Mr Doshi neither appealed against the notice within the statutory time limit nor sought any extension of time for compliance with it. Mr Doshi does not dispute that he failed to provide the information and documents sought by the notice within the time limit specified in the notice. As the was issued after Mr Doshi returned to work following his operation, we find that he had no reasonable excuse for his failure to provide the information sought, and we uphold the initial penalty of £300 and the daily penalties of £2040.

25 **Summary**

71. We find that the two information notices that are the subject of this appeal were properly issued, and that Mr Doshi failed to comply with them.

72. We dismiss his appeal against the initial penalties of £300 for each notice.

73. We find that he had a reasonable excuse for his failure to comply with the information notice of 21 November 2013 for the period from 25 March 2013 to 27 May 2013 and allow his appeal against daily penalties for that period. We dismiss his appeal and uphold the daily penalties charged for the period from 28 May 2013 to 13 June 2013 at £40 per day (17 days at £40 per day, totalling £680) and for the period from 14 June to 20 November 2014 at £6400.

74. We dismiss his appeal and uphold the daily penalties of £2040 in respect of his failure to comply with the information notice of 7 August 2014.

75. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later

than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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NICHOLAS ALEKSANDER

TRIBUNAL JUDGE

RELEASE DATE: 6 JANUARY 2016

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