



TC05383

Appeal number: TC/2015/05070

VALUE ADDED TAX – Notice issued under Sch 36 FA 2008 – appeal under para 29(1) – whether bank statements are ‘statutory records’ – VATA 1994 s 62 – reg 31(1) of VAT Regulations 1995 – bank statements are business and accounting records within the meaning of statutory records – appeal dismissed; Decision under para 32(5) is final – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SHIMLAS LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE HEIDI POON
PETER SHEPPARD FCIS, FCIB, CTA**

**Sitting in public at the Tribunal Centre, City Exchange, 11 Albion Street, Leeds
on 17 February 2016**

Mr Ishmael Musah of Knightsbridge Accountants Ltd for the Appellant

**Mr J Nicholson, Presenting Officer of HM Revenue and Customs, for the
Respondents**

DECISION

Introduction

1. The appellant company ('Shimlas') appealed against the penalty of £300 for a failure to comply with the Information Notice issued ('the Notice') on 6 March 2015 under paragraph 1 of Schedule 36 to the Finance Act 2008 ('Sch 36').

2. Procedurally, the appeal is against the penalty and not the Notice itself. For an appeal against a Sch 36 penalty, the only valid ground of appeal is whether the appellant had a reasonable excuse for not complying with the Notice. Under Sch 36, para 45, if Shimlas has such an excuse, liability to a penalty does not arise.

3. The Information Notice was issued on 6 March 2015 and the appellant did not appeal against the Notice. The penalty notice of £300 was issued on 23 April 2015, and the appellant lodged an appeal against the penalty on 21 August 2015.

4. While the appeal is lodged against the penalty, the grounds of appeal as stated in the Notice of Appeal do not concern 'reasonable excuse' in any manner or form. Instead, the appellant's case is advanced on the basis that the bank statements requested are not statutory records. The appellant's appeal would seem to be directly against the Notice itself, rather than against the penalty.

5. Procedurally, the appellant has not appealed against the Notice within the required time limit. However, the appellant had stated its objection against the Notice by email dated 11 March 2015. In both the review decision, and at the hearing in the leading of evidence and in submission, HMRC have responded to the appeal by addressing directly the appellant's grounds of appeal; that is, on the substantive issue as the appellant contends, that the bank statements required are not 'statutory records' and hence the Notice is not valid. For these reasons, the Tribunal has considered the appellant's case as advanced on substantive grounds against the Notice itself.

Issues for determination

6. The principal issue for the Tribunal to determine is whether the bank statements requested on the Notice are 'statutory records'. If so, there is no right of appeal against the Decision.

7. The valid ground of an appeal against a penalty imposed for a failure to comply with the Notice is on 'reasonable excuse'. The appellant has not advanced a case on reasonable excuse.

Factual background

8. Shimlas is the owner of a restaurant business and has been registered for VAT since 1 March 2004.

9. In December 2014, HMRC carried out an inspection into the appellant's business records for the purpose of verifying the completeness and accuracy of its VAT declarations.

5 10. On 6 March 2015, HMRC issued Shimlas with a 'Notice to provide information and produce documents' under Sch 36, para 1. Among the items of requested documents are 'all bank and building society books or statements' for the period from 1 February 2011 to 31 October 2014.

11. Shimlas was given until 7 April 2015 to provide the requested items.

10 12. By email dated 11 March 2015, Shimlas's representative Knightbridge Accountants ('Knightbridge') advised that the company would not provide the bank statements for two reasons: (a) the bank statements are not used to prepare the VAT account or the VAT return; and (b) the bank statements are not 'statutory records'.

15 13. The Tribunal notes from the email of 11 March 2015 that the appellant would seem to be aware of certain technical issues with the electronic tills that were in use. In relation to the operation of the electronic tills, Knightbridge advised:

'The operating system used in the two tills according to the till man was developed bespoke ... They are in the process of changing to off the shelf system as they are encountering several operational issues with the current one.'

20 14. On 20 March 2015, HMRC replied to Knightbridge advising that bank statements are statutory records and relevant to the VAT enquiry of the appellant.

25 15. On 23 April 2015, a penalty notice for £300 was issued as Shimlas had not produced all the items requested on the Notice by 7 April 2015. The items not having been produced are the bank statements, and the related pay-in counterfoils and cheque book stubs.

16. By email dated 18 May 2015, Knightbridge appealed against the penalty, stating the appellant's case as follows:

30 'We have reasons to believe the penalty is not appropriate considering the fact that you requested for a document which is NOT a statutory document.

As requested in our correspondence dated the 02/04/2015. If you insist a bank statement is a statutory records evidence the legislature or legislation that state so.

35 You fail to do that and instead proceeded to issuing the penalty. Because you fail to prove it is a statutory records you should not be charging as any penalty as such we believe the penalty has been wrongly and harshly issued.

We hereby demand a cancellation of the penalty on the grounds of inappropriateness and unreasonableness.

Should you be able to prove a bank statement is a statutory records you should let me know and i will relate to my client for reconsideration.'

17. By email dated 22 May 2015, the enquiry officer advised that the definition of 'statutory records' for VAT purposes falls within the Statutory Instrument (SI 1995/2518), which is the Value Added Tax Regulations 1995. Under regulation 31(1)(a), every taxable person is required to keep 'his business and accounting records', and that business and accounting records would include bank statements; hence bank statements are statutory records.

18. By email of the same day, Knightbridge replied as follows:

10 'Section 31(1) a Does not specifically mentioned Bank statement. It states business and accounting records.

Business and accounting records are the records we used in preparing the business accounts ok?

15 We DO NOT use the business bank statements in preparing the accounts simply because:

1. It is not mandatory
2. We do not do bank reconciliation which is also not mandatory
3. We are not using cash accounting method for vat and for preparing the accounts

20 Because we are not using cash accounting vat method and also not doing bank reconciliation means our bank statement DO NOT form part of the statutory records.

EMPHASIS on above which has been mention times and again!

25 At this point i do think going to the tribunal is the best option considering you still fail to prove the bank statement is a statutory records ...'

19. On 29 May 2015, the officer sought clarification of whether Shimlas wanted a statutory review or wished to go straight to the Tribunal. Knightbridge accepted the offer of a review, which upheld the penalty.

30 20. By notice dated 21 August 2015, Knightbridge appealed against the penalty to the Tribunal on Shimlas's behalf.

Evidence at the hearing

21. Mr W Ditta, owner of Shimlas, attended the hearing but did not give evidence.

35 22. Mrs M Brierley of HMRC gave evidence. She is a senior officer with supervisory responsibilities for the VAT Assurance Unit based at Bradford and from which the VAT enquiry into Shimlas is being conducted.

23. Mrs Brierley related that during the VAT inspection of the appellant's business in December 2014, Officer Terry spoke to the owner who confirmed that there were two machines in operation to take credit card payments from customers. These are

PDQ machines for merchants' use; (PDQ stands for 'Pretty Darn Quick'). The receipt of these credit card payments went direct into a bank account.

24. Officer Terry had asked to see the transaction reports related to the PDQ machines. There were attempts to obtain such data from the electronic 'point of sale' tills on two separate occasions, but technical issues have prevented the data from being downloaded or accessed.

25. To date, HMRC still have not received any data related to the credit card transactions that have been processed by the PDQ machines. As a result of these primary records being absent, HMRC are unable to verify the VAT declarations for their completeness and accuracy. The statements of the bank account into which the credit card payments have been processed are therefore the alternative to ascertain the completeness of turnover made by the business.

26. In respect of documents or information that had been produced so far, Mrs Brierley stated that (a) the daily forms of gross takings, (b) some till reports, and (c) some purchase records had been provided.

27. In cross-examination, Mr Musah of Knightbridge referred to the till reports that had been produced in an electronic format, and questioned why that information was not sufficient for interrogating the tills. Mrs Brierley replied by stating that HMRC computing officers had tried to access the till reports but the data would seem to have been wiped or rendered inaccessible to HMRC.

28. In re-examination, Mr Nicholson covered the aspect of expenditure and Mrs Brierley related the fact that the question had been put to the appellant in the course of the enquiry: 'Do you pay for everything by cash?' The appellant confirmed that some bills are not payable in cash, and are paid by direct debit via a bank account, and that the appellant's VAT liabilities are also met via a bank account.

Documents referred to at the hearing

29. At the hearing, HMRC provided for the Tribunal's reference the Sch 36 Notice as served on the appellant. The Notice has the heading of 'Statutory records or information that we need', and the items on the Notice are as follows:

30 'Statutory records are the record that tax law says a person must keep.
All the following must be provided for the period 01/02/2011 to
31/10/2014.

35 All bank and/or building society books or statements, cheque book
stubs and deposit book counterfoils for any account into which any
income from the business or from which any expenditure from the
business was paid during the period of the accounts.

Record of daily takings.'

30. The second document produced and referred to at the hearing by HMRC is an official form dated 15 June 2004 to request information in relation to Shimlas's

application to register for VAT on Form VAT 1, dated 4 May 2004. The following items of information were requested:

- (1) Please give the date on which you are required to be registered – reply ‘01/03/04’;
- 5 (2) Please provide your bank account details or Girobank account number – reply with details of an HSBC account: sort code and account number;
- (3) Please provide your National Insurance Number – reply ‘Applied for. Waiting for DHSS.’

10 The form requested a reply by 30 June 2004; the copy of the form shows the reply having been hand-written onto the form and faxed on 21 July 2004. The form was signed by Shimlas’s former agent, Munir Chaudry Associates.

15 31. Mr Nicholson drew the Tribunal’s attention to the HSBC account that was provided on the information request form, indicating that there has been a bank account for the business from the time of the application to register for VAT. Indeed, the appellant has confirmed that its VAT liabilities are met via a bank account.

The Appellant’s case

32. To avoid re-phrasing any points or substituting words through an attempt to summarise, the grounds on the Notice of Appeal are quoted verbatim.

20 33. The appellant’s case starts by relating the way Shimlas operates as a business and what records are used for preparing the VAT returns:

‘Shimlas ... was visited for vat purposes on the 16/02/15. The business provided all its statutory records which are the main prime source of all it vat returns.

25 This mainly were evidence of all input and out put vat records example till receipts for all sales.

The business does not have a bank account as most of its transactions are cash based. It however use a “family accounts” for paying it vat only. Any other expenses (majority) is paid by cash.’

30 34. It would appear that there is only one bank account being referred to, which is further described as:

35 ‘This family accounts has been used for other business like Desi shakes shimlas express and Newline furniture as all these business could not obtain bank accounts due to poor credit score. This said bank account contain other third parties which include the 3 directors of Shimlas, their father and several other businesses information which cannot be provided to HMRC for confidentiality reasons as those parties are not part of the enquire.’

35. The basis of the Notice is questioned by Mr Musah of Knightbridge as follows:

‘It is not clear on what basis HMRC require this information.

My understanding is, they think the bank accounts should form part of Shimlas statutory records.

5 If that is the case. Well that is plainly wrong. Section (sec 113-sec 128 of companies Act) clearly state what statutory documents. Clearly bank statement is not mentioned.

They could have been right if the bank statement were used or aid us in preparing the business records. The fact is, the business does not do bank reconciliation or look at its statement at any point in time. It does not even have one of it own which has been used as such.

10 A compromise might have been possible if the bank statement was reasonable required.

However that is not the case as clearly stated in their correspondence they require the bank statement as they think it form part of the tax payer statutory records.

15 Because we believe the statement does not form part of the business statutory records and HMRC do not reasonable require them as they could not have been reasonable required considering they have been provided with till receipts supporting the out put vat.

20 As above we did not supply the bank statement due to all above and most importantly the business does not have one of it own use.'

36. The grounds of appeal are then summarised as follows:

'Shimlas was charged a penalty for failing to provide a statement which HMRC wrongly construed as statutory records.

Shimlas hereby appeal the penalty due to the following:

- 25
1. The required bank statement does not form part of the business statutory records.
 2. The business does not even have a bank account for it own used
 3. The business does not do bank reconciliation due to paragraph 2 above.
 - 30 4. No bank accounts is even available as majority of the business is cash based
 5. The business cannot simply provide what it does not have as above 2,3,4.
 - 35 6. They are no reasonable grounds for requiring the bank accounts which contain 99 percent third party information.
 7. We ask for prove that the bank statement is statutory.
 8. HMRC fail to prove as 6 above.
 9. No bank account is used or looked at during the business quarterly vat returns. (so not part of the statutory records)'

40 37. In submission, Mr Musah reiterated the points covered in the grounds of appeal: that before someone can pay by card, the card reader has to read the card, and the reading of the card means every sale goes through the till; that the till reports have

been provided; that the business does not do bank reconciliation; that the bank account does not belong to the business; that HMRC have failed to prove bank statements are business records; that *Beckwith* (see below) is not applicable as it concerns a sole-trader and is not the same entity as Shimlas, which is a company.

5 **HMRC's case**

38. In the review decision given by letter dated 24 July 2015, the officer relates HMRC powers under Sch 36 as follows:

‘Clearly HMRC is empowered to request both statutory and non-statutory information/documents so long as the request is reasonable.

10 The only distinction between formal requests for statutory records and formal requests for non-statutory records is that the former request is not appealable to a Tribunal.’

39. The review officer continues by stating that ‘whether or not bank statements are statutory records is beside the point with regard to legitimacy of the notice requiring the production of documents. If the documents required are either statutory records or non-statutory records reasonably required, then the notice is valid.’

40. The officer concludes that bank statements are statutory records according to HMRC's published policy because bank statements are ‘business records’ within the meaning under VAT regulation 31(1). References to Public Notice 700 at 19.2.3 and Public Notice 700/21 at 2.3 are made.

41. Reference is also made to *Jonathon Beckwith v HMRC* [2012] UKFTT 181 (TC) (*Beckwith*), in which bank statements in respect of any bank account through which business funds passed are held to be business records and form part of the ‘statutory records’ of the business.

25 42. The review officer also states that in the event the banks statements are held not to be statutory records in Shimlas's case by a Tribunal, the requirement to produce them was still reasonable.

30 43. The officer highlights that the bank statements are a necessary part of the audit trail of the VAT records in Shimlas's case. Given the fact that ‘much of the primary audit trail information, i.e. the information held on the EPOS [electronic point of sale] tills has been destroyed, the information held in the bank statements effectively becomes the principal source of information by which HMRC can use to verify the declarations of VAT.’

35 44. The penalty is therefore upheld, on the basis that the notice has been validly served. Knightbridge have not contended that Shimlas had a reasonable excuse, and even if HMRC are to consider that Knightbridge's misunderstanding of the legal provisions under Sch 36 in the light of reasonable excuse, ‘*misunderstanding the law is not a reasonable excuse*’ (*Beckwith* at [88]).

45. Mr Nicholson addressed the Tribunal at the hearing, confirming the review decision as representative of HMRC's position. Responding to the fact noted in the Notice of Appeal that 99% of the transactions in the family account are alleged to be private, Mr Nicholson emphasised the fact that even if only 1% of the transactions
5 relate to Shimlas, those transactions introduce the account into the business; and that is so even if 1% of the transactions means only one transaction in total; that business transactions cover both income and expenses related to the business operation, and the appellant has confirmed that expenses are paid by direct debit via a bank account.

The legislative framework

10 46. HMRC's powers to obtain information and documents from a taxpayer are provided under Sch 36, of which para 1 states as follows:

'1 (1) An officer of Revenue and Customs may by notice in writing require a person ("the taxpayer") –

- 15 (a) to provide information, or
(b) to provide a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.'

47. The legislation governing appeals against information notices is provided under Part 5 of Sch 36, of which para 29 states:

20 '29 (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. ...'

25 48. The provisions in relation to an appeal against an information notice to the Tribunal are under para 32, and under sub-paras 32(3) and (5), it is stated:

'32 (3) On an appeal that is notified to the tribunal, the tribunal may –

- 30 (a) confirm the information notice or a requirement in the information notice,
(b) vary the information notice or such a requirement, or
(c) set aside the information notice or such a requirement.

...

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

49. The definition of 'statutory records' for the purposes of Sch 36 is under para 62:

'62 (1) For the purposes of this Schedule, information or a document forms part of a person's statutory records if it is information or a

document which the person is required to keep and preserve under or by virtue of –

- (a) the Taxes Acts, or
- (b) any other enactment relating to a tax,

5 subject to the following provisions of this paragraph.

(2) To the extent that any information or document that is required to be kept and preserved under or by virtue of the Taxes Act –

- (a) does not relate to the carrying on of a business, and
- (b) is not also required to be kept or preserved under or by
10 virtue of any other enactment relating to a tax,

it only forms part of the a person’s statutory records to the extent that the chargeable period or periods to which it relates has or have ended.

(3) Information and documents cease to form part of a person’s statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired.’
15

50. Sch 36, para 63 defines ‘a tax’ as including VAT.

51. Information and documents which a taxable person is required to keep for the purposes of the Value Added Taxes Act 1994 (‘VATA’) are set out at Sch 11, para 6:

20 **‘Duty to keep records**

(1) Every taxable person shall keep such records as the Commissioners may by regulations require ...

(2) Regulations under sub-paragraph (1) above may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
25

(3) The Commissioners may require any records kept in pursuance of this paragraph to be preserved for such period not exceeding 6 years as they may specify in writing (and different periods may be specified by different cases).
30

(4) The duty under this paragraph to preserve records may be discharged –

- (a) by preserving them in any form and by any means, or
- (b) by preserving the information contained in them in any form and
35 by any means,

subject to any conditions or expectations specified in writing by the Commissioners for Her Majesty’s Revenue and Customs.’

52. Regulation 31 of the VAT Regulations 1995 specifies as follows:

‘Records

(1) Every taxable person shall, for the purposes of accounting for VAT, keep the following records –

- 5
- (a) his business and accounting records,
 - (b) his VAT account,
 - (c) copies of all VAT invoices issued by him,
 - (d) all VAT invoices received by him ...’

53. With reference to the VAT Notice 700/21 entitled ‘Keeping VAT Records’:

10 (1) The opening paragraph §1 states: ‘This notice gives guidance on the records you must keep if you are registered for VAT.’

(2) At §2.3 it is stated that HMRC’s ‘view of business records is wide and will include ... bank statements and paying-in slips’.

15 (3) At §2.4 the duration for records to be kept is stated as: ‘Generally, you must keep all your business records for VAT purposes for at least six years. Records that you use for other tax purposes may need to be kept for longer periods.’

Discussion

The relevance of the determination of ‘statutory records’

20 54. Within Sch 36 itself, the relevance of a determination of whether an item of requested information is a statutory record is in relation to its appeal right.

55. Sch 36, para 29 confers a restricted right of appeal whereby a taxpayer may appeal against the notice or any requirement in the notice (sub-para 29(1)), but the right of appeal does not apply to a requirement in an information notice if the requested item forms part of the taxpayer’s statutory records (sub-para 29(2)).

25 56. In the Upper Tribunal decision of *Jordan v HMRC* [2015] UKUT 218 (TCC), Judge Bishopp addresses several questions arising from the interpretation of Sch 36, para 29 and its engagement with para 32. The question addressed at [29] is ‘whether the tribunal’s decision that an item is, or is not, part of the statutory record is susceptible of further appeal’. The conclusion to this question is at [30], which states:

30 ‘... the only avenue of appeal to the F-tT is that contained in para 29(1) and, since sub-para (2) precludes an appeal so far as the notice relates to statutory records, any appeal by a taxpayer against an information notice must be based on the premise that any document identified in the notice as part of his statutory record has been wrongly so

35 identified, that the tribunal should determine that issue and, if he is right in his contention that the item does not form part of his statutory record, he should not be required to provide it, for one reason or another. A decision of the F-tT on the identification point, whichever way it falls, must therefore be a decision given on an appeal within

40 para 29(1), and para 32(5) is accordingly engaged.’

57. Paragraph 32(5) states that ‘a decision of the tribunal on an appeal under this Part of this Schedule is final’.

58. The appellant has advanced the case on the premise that the bank statements are not statutory records, and therefore the request for their production is not legitimate.

5 59. The determination of this appeal therefore hinges on the definition of ‘statutory records’, and whether the bank statements requested in the appellant’s case fall within that definition. If the bank statements fall within the definition of statutory records, then the appellant has no right of appeal against the Tribunal’s decision, and the appeal will accordingly be struck out.

10 *The meaning of ‘statutory records’*

60. For the purposes of Sch 36, para 62 (1) states that information or documents are ‘statutory records’ if it is information or a document –

(1) which the person is required to keep and preserve

(2) under or by virtue of –

15 (a) the Taxes Acts, or

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

61. There are two constituent parts to the definition of ‘statutory records’. The first refers to a taxpayer’s obligation ‘to keep and preserve’ as laid down by the related statutes. The second part cross-refers to provisions outside Schedule 36, to the Taxes
20 Acts or any other enactment relating to a tax. Sch 36, para 62(1) is therefore not free-standing and the definition of ‘statutory records’ must be cross-referenced to the specific provisions in relation to the tax in issue.

62. The tax in issue is VAT, which is included in the list of taxes under para 63. The cross-reference is therefore to VATA 1994 for the purpose of establishing what is
25 required of the taxpayer ‘to keep and preserve’ as records by the statute.

63. Under the heading of ‘Duty to keep records’, Sch 11, para 6 lists as the first requirement: *Every taxable person shall keep such records as the Commissioners may by regulations require*. This is a provision that delegates the powers to the
30 Commissioners to specify what records are required to be kept, and takes the tracing of the definition for statutory records to reg 31 of the VAT Regulations 1995 (SI1995/2518), which is a Statutory Instrument under which the Commissioners have exercised the powers delegated under VATA.

64. Regulation 31 has as its heading ‘Records’ and lists the records a VAT-
35 registered trader is required to keep and preserve for VAT purposes; i.e. his *statutory records*. The identification of the bank statements as statutory records falls under reg 31(1)(a) –

‘(1) Every taxable person shall, for the purposes of accounting for VAT, keep the following records –

(a) his business and accounting records, ...’

65. Further guidance of the Commissioners' view on 'business and accounting records' is stated at §2.3 of the VAT Notice 700/21 – the Commissioners' view of business records is *wide* and will *include bank statements* and paying-in slips.

5 66. In the Notice of Appeal, the appellant has referred to the Companies Act 2006, ss 113 to 128 for a definition of 'statutory records'. Those provisions relate to the register of members in the context of an entity being incorporated and constituted under the Companies Act 2006 and have no relevance in construing what 'statutory records' are in relation to VAT for the purposes of Schedule 36.

10 67. Under Sch 36, para 62, the cross-referencing to other provisions are clearly stated as 'the Taxes Act', or 'any other enactment related to a tax'. In relation to VAT, the cross-referencing to an Act of Parliament is to the Value Added Tax Act 1994 (VATA), and to the Statutory Instrument SI 1995/2518 which enacted the VAT Regulations 1995.

Whether bank statements form part of 'business and accounting records'

15 68. The Tribunal finds as a fact that the restaurant business of Shimlas has made credit card sales, and these sales have to go through a bank account to be credited to the trader. (Though the reference at the hearing was to 'credit card sales', the Tribunal takes it to mean all card sales, including those by a debit card.)

20 69. The Tribunal takes judicial notice of the fact that without the intermediary of the banking system, there is no way of processing any of the card payments. The bank account through which the card sales have gone through is an indispensable operative part of the business, and therefore forms part of its business records under the definition of statutory records.

25 70. In relation to expenses, the appellant has stated in the Notice of Appeal that 'Any other expenses (majority) is paid by cash'. The corollary is that there are expenses not paid by cash, but by other means, such as by direct debit through a bank account. In so far as there are business expenses paid via a bank account, the bank account is an operative part of the business and the statements of that account are business records that fall within the definition of statutory records.

30 71. The Tribunal therefore concludes that the bank statements are *business* records and they fall within the meaning of statutory records under reg 31(1)(a) by virtue of the bank account being a *necessary* operative part of the appellant's business through which income and expenditure related to the business passed.

35 72. Furthermore, the Tribunal also finds that the bank statements are statutory records by virtue of their being an essential part of the appellant's *accounting* records.

40 73. The appellant contends that all sales have gone through the till reports, which have been provided to HMRC to establish the sales records. That may be so, but the Tribunal also finds as a fact that the till reports in electronic format have, for whatever reason, been rendered inaccessible for information retrieval. The review officer describes the data on the reports as having been 'destroyed'.

74. Under reg 31(4), it is stated as follows:

‘The duty under this paragraph to preserve records may be discharged–

(a) by preserving them in any form and by any means, or

5

(b) by preserving the information contained in them in any form and by any means, ...’

75. Since the till reports have not been preserved to enable retrieval of information, the appellant has not discharged the duty to provide a complete sales record. The sales information recorded on the bank statements effectively becomes the principal source of information which HMRC can use to verify the declarations of VAT.

10 76. The appellant also asserts that all VAT declarations have been prepared without referring to the bank statements and no bank reconciliation is performed. The manner in which the appellant has prepared its VAT declarations is not determinative of whether the bank statements form part of its business and accounting records. It could well be considered to be ‘not best practice’ to prepare VAT declarations without
15 reconciling the till reports with the bank statements.

77. Professional standards of accounting practice are based on double entry book-keeping. The routine performance of bank reconciliation is an indispensable part of double entry accounting for the purpose of ensuring the *accuracy* and *completeness* of the accounting records of an entity. By checking sales according to the till reports
20 against the credit entries in the bank statements, it can help to ensure that all sales are recorded (completeness), and that each sale figure is correctly recorded (accuracy). The bank statements are therefore accounting records essential for the purpose of verifying the accuracy and completeness of the appellant’s VAT declarations.

78. The appellant contends that the bank account is mixed with 99% private entries.
25 No evidence has been produced to substantiate that assertion. Whether or not that 99% is in fact accurate, the existence of entries unrelated to the business is of no relevance to the determination of whether the bank statements are *business and accounting records*. As Mr Nicholson has submitted, even if only 1% of the entries relate to Shimlas, as the appellant seems to have conceded, that still renders the bank
30 account a business account and the statements related thereto business records and hence, statutory records within the definition of reg 31(1)(a).

79. Finally, the appellant has clearly stated the details of an HSBC account in connection with its application to register for VAT. This declared bank account forms part of Shimlas’s business records, and their statements are statutory records
35 therefore.

80. For the avoidance of doubt, this Decision is not restricted to the HSBC account as detailed on the information request form for VAT registration purpose, or to the ‘family account’ with mixed funds that has been referred to in the appellant’s grounds of appeal. The Decision is to apply to any bank or building society accounts, which
40 were or have been used in and for the operation of the business of Shimlas during the period from 01/02/2011 to 31/10/2014 as designated on the Information Notice.

No right of appeal if requested bank statements are statutory records

81. This decision is given on an appeal within Sch 36, para 29(1), and the decision is *final* by virtue of para 32(5).

Decision

5 82. The items of information and documents required as listed on the Information Notice served on Shimlas and dated 6 March 2015 are ‘statutory records’ for the purposes of Schedule 36 to the Finance Act 2008.

83. Pursuant to paragraph 32(5) of Schedule 36 to Finance Act 2008, there is no right of appeal against this Decision; the appeal is accordingly struck out

10 84. The penalty of £300 for the failure to comply with the said Notice is confirmed.

85. This document contains full findings of fact and reasons for the Decision.

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**DR HEIDI POON
TRIBUNAL JUDGE**

RELEASE DATE: 22 SEPTEMBER 2016