

[2019] UKFTT 89 (TC)



**TC06973**

**Appeal number: TC/2018/04098**

*INFORMATION NOTICE – penalty – failure to provide information –  
reasonable excuse – no – appeal dismissed – Schedule 36, Finance Act 2008*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ALEXANDRU TRIFAUTAN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ALEKSANDER  
ELIZABETH BRIDGE**

**Sitting in public at Taylor House on 10 December 2018**

**The appellant did not attend and was not represented**

**Natasha George, an officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Mr Trifautan against a penalty of £300 for failure to comply  
5 with an information notice. The penalty notice was issued to Mr Trifautan on 25 January  
2018. The penalty was upheld on review and this decision was communicated to Mr  
Trifautan by letter dated 30 May 2018, and it is against this review that Mr Trifautan  
now appeals.

2. At the hearing HMRC were represented by Ms George. Mr Trifautan did not  
10 attend and was not represented at the hearing. Nevertheless we were satisfied that that  
reasonable steps had been taken to notify Mr Trifautan of the hearing, as the Tribunal  
had written him notifying the hearing date and venue. Mr Trifautan did not provide a  
telephone number on his notice of appeal, it was therefore not possible to telephone him  
before the hearing commenced. However, there were included in the document bundle  
15 extensive correspondence about the information notice and Mr Trifautan's reasons for  
not being able to comply with it. In these circumstances, we decided that it was in the  
interests of justice to proceed with the hearing.

3. We had before us a bundle of documents prepared by HMRC. Included in the  
bundle was correspondence from Mr Trifautan setting out his grounds for appeal. These  
20 were also set out in the Notice of Appeal.

### **Background Facts**

4. The background facts are, for the most part, not in dispute, and we find them to  
be as follows.

5. On 16 August 2017, HMRC opened an enquiry into Mr Trifautan's 2015/16 tax  
25 return. Mr Trifautan was asked to produce to HMRC a copy of all books and records  
from which the business accounts were prepared for the year ended 5 April 2016.

6. During the course of the enquiry, on 4 October 2017 HMRC wrote to Mr  
Trifautan requesting a copy of all books and records from which the accounts for the  
year ended 5 April 2016 were prepared – including prime records and till rolls.

7. As the information requested had not been provided, on 22 November 2017,  
30 HMRC issued an information notice under paragraph 1, Schedule 36, Finance Act 2008  
requiring Mr Trifautan to provide this information.

8. As no information had been received from Mr Trifautan, on 25 January 2018  
HMRC issued a penalty notice under paragraph 39, Schedule 36, Finance Act 2008,  
35 imposing a penalty of £300 for his failure to comply with the information notice. On  
24 February 2018, HMRC received a response, which included a spreadsheet and  
stating that there were no further records available. Ms George tells us that the  
information is still outstanding.

9. It is not disputed that Mr Trifautan failed to comply with the information notice. The issue in this appeal is whether he had a reasonable excuse for his failure.

10. Mr Trifautan in his notice of appeal states that he has no reason not to provide all the information requested to HMRC. However Mr Trifautan was involved in a "horrible  
5 accident while doing a work delivery", and his mobility was restricted because he was in crutches. In addition, he had recently moved home and all of his documents were disorganised.

11. Included in the bundle were pictures supplied by Mr Trifautan of his injuries, together with copies of X-rays and of a discharge report dated 15 December 2015 from  
10 St Mary's Hospital, London. From the report, it is clear that Mr Trifautan was admitted to hospital on 27 November 2015 following a collision between his motorbike and a van. He had four procedures under two anaesthetics. It is obvious from the report that his injuries were serious. Mr Trifautan required a further operation, and to avoid NHS waiting lists, he travelled to Moldova for the operation. A discharge notice from the  
15 hospital in Chisinau is included in the bundle. It is written in (presumably) Romanian, and no translation is included. But it is possible to deduce that Mr Trifautan was admitted to the hospital on 30 August 2016 and discharged on 24 September 2016.

### **The law**

12. Section 12B(3) Taxes Management Act 1970 requires any person carrying on a  
20 trade (such as Mr Trifautan) to keep certain records for a minimum period of five or six years. These include records of all receipts and expenses in the course of the trade, records of the matters in respect of which those receipts and expenditure take place, and records of all sales and purchases made in the course of any trade involving dealing in goods. The records that are required by statute to be kept are known as "statutory  
25 records".

13. HMRC has power by notice issued under paragraph 1, Schedule 36, Finance Act 2008 to require a taxpayer to provide information or produce a document if the information or document is reasonably required by HMRC for the purposes of checking the taxpayer's tax position.

30 14. There is no suggestion in any of the documents in the bundle, that the information requested by HMRC was not reasonably required to check Mr Trifautan's tax position.

15. Paragraph 39 of Schedule 36 gives HMRC power to impose a penalty of £300 if a person fails to comply with an information notice. Paragraph 45 of Schedule 36 provides that a penalty does not arise if there is a reasonable excuse for the failure to  
35 comply with the information notice. This is subject to various conditions that are not relevant in this case.

### **Submissions**

16. Ms George submits that Mr Trifautan's failure to comply with the information notice by 25 January 2018 was not in dispute. The relevant information and penalty

notices were sent to Mr Trifautan at his last known address, and it is clear from the correspondence in the bundle that these were all received. Therefore, the statutory requirements for the penalty under paragraph 39, Schedule 36, were met. The only issue is whether Mr Trifautan had a reasonable excuse for his failure.

5 17. The records requested by the information notice formed part of the Mr Trifautan's statutory records, and therefore would need to have been retained by Mr Trifautan. Mr George acknowledges that Mr Trifautan had a traumatic and serious accident. But she submits that this does not establish a reasonable excuse for his failure to produce the documents. The accident occurred just under two years prior to the original request for  
10 information. He was discharged from the Moldovan hospital following the final operation in September 2016, more than one year prior to the information notice. There is nothing included in the bundles that indicate that Mr Trifautan continued to be incapacitated from his injuries at the time the information notice was issued.

15 18. As regards moving house, whilst this may have had some impact on retrieval of the records immediately prior to, and after, the house move, there is no evidence as to why the move would prevent the production of the records (which in the end transpired to be a single electronic record, being a spreadsheet) in the several months since they were originally requested.

### **Conclusions**

20 19. We find that the requirements set out in Schedule 36 for the levying of the penalties that are the subject of this appeal have all been satisfied. We find that Mr Trifautan did not have a reasonable excuse for his failure to comply with the information notice. We therefore dismiss this appeal.

25 20. We agree with Ms George's submissions that the injuries suffered by Mr Trifautan predate the information notice by approximately two years. There is no evidence before us that indicates that the effect of the injuries had continued to last to the extent that he was prevented from complying with the information notice in 2017.

30 21. Even if Mr Trifautan was incapacitated, he had more than three months from the original voluntary request for information to provide it – and two months from the date of the information notice. Given that the information provided in the end was a spreadsheet in electronic form (with a statement that there were no other documents), it appears to us unlikely that his injuries would have had a material impact on his ability to email this single electronic document.

35 22. We are also not satisfied that Mr Trifautan's house move would provide a reasonable excuse for his failure to comply with the information notice. The dates of the house move are not given, and we do not know when the records were packed up in anticipation of the move, and when they became available again. In any event, Mr Trifautan had several months to provide the records between the information notice being issued and the date of the penalty notice.

23. We find that Mr Trifautan did not have a reasonable excuse for his failure to comply with the information notice, and dismiss the appeal.

24. 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**

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**RELEASE DATE: 11 FEBRUARY 2019**