



**TC04748**

Appeal number: TC/2015/04385

*INFORMATION NOTICE – appeal against  
fixed penalty for failure to comply – penalty upheld*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LINDA BREEZE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE THOMAS SCOTT  
SANDI O'NEILL**

**Sitting in public at Fox Court, London EC1 on 9 November 2015**

**The Appellant did not attend and was not represented, nevertheless written  
representations were provided by Freeman & Co**

**Ms Kim Sukul, Officer of HM Revenue and Customs, for the Respondents**

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## DECISION

### *Background*

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1. Dr Breeze's tax return for the year ended 5 April 2012 showed her as self-employed and as claiming a deduction from business profits for the sum of £48,100 gifted to a remuneration trust (the "Trust"). The founder of the Trust was IFP Consulting Ltd and the original trustees were a Belize company. The Trust made loans back to Dr Breeze which in aggregate matched the gift which she had made, less 10%.

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2. HMRC opened an enquiry on 10 January 2014 in order to check whether the deduction which had been claimed was allowable for tax purposes. On 19 June 2014, HMRC issued an information notice to Dr Breeze under paragraph 1 of Schedule 36 to the Finance Act 2008 ("Schedule 36"), requesting information and documents relating to the Trust and the payment to it by Dr Breeze.

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3. Certain items of the requested information and documents were provided by Dr Breeze and her representative, Freeman & Co, but others were not. Dr Breeze appealed against the information notice and accepted HMRC's offer of a review. The review upheld the notice in full, as communicated by letter from HMRC to Dr Breeze on 28 November 2014. The letter of 28 November 2014 allowed Dr Breeze 30 days to provide the outstanding information and documents, or notify an appeal to the tribunal.

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4. Dr Breeze did not appeal against the information notice to the tribunal.

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5. On 22 January 2015, HMRC wrote to Dr Breeze informing her that since she had not notified an appeal to the tribunal, the appeal had become settled in accordance with the review conclusions of 28 November 2014. The letter of 22 January 2015 set out the outstanding information and documents required, and stated that penalties would be charged if these were not provided by 23 February 2015.

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6. On 16 February 2015, Freeman & Co wrote to HMRC providing some further information, but not most of the outstanding information and documents. On 6 March 2015, HMRC wrote explaining why various items of information or documents were still required pursuant to the information notice, and issuing an initial penalty notice of £300.

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7. Freeman & Co appealed the penalty late, by letter of 16 April 2015, and HMRC accepted the late appeal. By letter of 7 May 2015, Freeman & Co accepted HMRC's offer of a review of the imposition of the penalty. By letter of 17 June 2015, HMRC informed Dr Breeze that following HMRC's statutory review the decision to impose the penalty had been upheld.

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8. On 13 July 2015, Freeman & Co lodged an appeal against the penalty notice on behalf of Dr Breeze. The stated grounds of appeal were “that all documentation requested by HMRC has been provided”.

### *The Hearing*

- 5 9. Neither Dr Breeze nor Freeman & Co attended the hearing of the appeal on 9 November 2015. Nevertheless, the Tribunal was satisfied that reasonable steps had been taken to notify Dr Breeze of the hearing, and there was no evidence or suggestion that the letter to Dr Breeze notifying her of the hearing had not been received. A telephone call from the clerk to the Tribunal to  
10 Freeman & Co immediately before the hearing established that Dr Breeze had been in contact with Freeman & Co during the previous week, but that Mr Freeman was away from the office, and there was no expectation of either Dr Breeze or Freeman & Co attending the hearing. The Tribunal was satisfied in the circumstances that it was in the interests of justice to proceed with the  
15 hearing.

### *Evidence*

10. We were not presented with any statement of facts. We were, however, given numerous relevant items of correspondence, as described further below.

### *Discussion*

- 20 11. Dr Breeze did not appeal to the tribunal against the information notice itself under paragraph 9 of Schedule 36. Arguments which could have been raised in appealing the notice, such as documents not being in the Appellant’s possession or power (paragraph 18 of Schedule 36), or information not being  
25 reasonably required for the purpose of checking Dr Breeze’s tax position were therefore not considered by any tribunal.
12. The £300 penalty in the appeal is chargeable under paragraph 39(2) of Schedule 36, for failure to comply with an information notice. Paragraph 47 provides a right of appeal against a decision by HMRC that such a penalty is payable.
- 30 13. Paragraph 45 of Schedule 36 provides that liability to such a penalty does not arise if the taxpayer satisfies the tribunal on appeal that there is a reasonable excuse for the failure to comply with the information notice.
14. The validity of the information notice has not been appealed. The penalty  
35 must therefore stand unless Dr Breeze can show a reasonable excuse for failure to comply with the notice.
15. The Tribunal considered various items of correspondence between HMRC and either Dr Breeze or Freeman & Co relating to the information and documents which HMRC contended had not been supplied as requested. Since Dr Breeze’s appeal against the penalty was on the basis “that all documentation

requested by HMRC has been provided”, it was necessary for the Tribunal to establish whether this was or was not the case.

16. The Information Notice issued on 19 June 2014 requested information and documents under the following headings:

- 5 (1) Information and Documents from the Trustees;
- (2) Trust Purpose;
- (3) Beneficiaries;
- (4) Generally Accepted Accounting Practice;
- (5) Operation of the Trust;
- 10 (6) White Space Note;
- (7) Capital Introduced and Drawings.

The Notice concluded with the words ”[W]here any of the documents requested above are not currently held by Dr Breeze but they are held by the Trustees, she should obtain them from the Trustees now and then send them to me”.

17. A letter of 24 September 2014 from HMRC to Dr Breeze described information and documents which were at that time outstanding under headings (1), (2), (3) and (7) of the Information Notice. Freeman & Co replied to that letter on 31 October 2014, but their reply supplied the outstanding information only in relation to some but not all of the items in category (7).

18. The HMRC statutory review conclusion, by letter of 28 November 2014 to Dr Breeze, summarised the position as follows:

“Points at issue

25 Whether you should comply with the Schedule 36 FA 2008 notice issued on 19 June 2014 as it is maintained on your behalf that the information and documents:

1. are not reasonably required for the purpose of checking your tax position; and
- 30 2. much of the information and documents has been provided to HMRC.

In addition it is asserted that your business has no knowledge/information concerning the actions of the trustees in operating the trust arrangements, and has received no documents,

accounts or reports in that regard. In short information and documents should be sought not from you but from the trust.”

After a detailed consideration of all the facts, the HMRC review letter concluded that the Information Notice was appropriate in the circumstances and should be upheld, and the outstanding information and documents listed under headings (1), (3) and (7) of the Information Notice should be supplied to HMRC.

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19. Dr Breeze did not appeal the Information Notice to the tribunal. HMRC wrote to Dr Breeze on 22 January 2015, stating that accordingly “the appeal has become settled in accordance with the review conclusion”. The letter clarified the outstanding information and documents.
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20. Freeman & Co replied on 16 February 2015. As regards most of the outstanding issues, the letter stated “we have already answered these questions in previous correspondence”. Some but not all of the outstanding information under heading (7) was supplied.
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21. By letter of 6 March 2015 to Dr Breeze, HMRC issued a £300 penalty notice. That letter summarised why HMRC considered that there had not been a satisfactory response in respect of the outstanding information and documents, as follows:
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- (a) The documents and information relating to the Trust, the trustees and the beneficiaries (headings (1), (2) and (3) of the Information Notice) remained outstanding.
- (b) Various bank statements which had been requested had not been supplied.
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- (c) Other documentary evidence relating to payments from the Trust had not been supplied.
22. By letter of 17 June 2015 to Dr Breeze, HMRC’s statutory review of the penalty notice upheld that notice. The letter referred again to the outstanding information and documents described in the letter of 6 March 2015.
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23. Having considered all the evidence, the Tribunal concluded that on the facts it was not correct to say, as Freeman & Co had asserted, that all the requested information and documents had been provided to HMRC. There were significant omissions, which in the view of the Tribunal were reasonably required by HMRC for the purpose of checking Dr Breeze’s tax position.
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24. The Tribunal was presented with no evidence on behalf of Dr Breeze which would amount to a “reasonable excuse” for the failure to comply with the Information Notice. It is clear from case law that, while “reasonable excuse” is a matter to be considered in the light of all the circumstances of the particular case, it is essentially limited to events outside the taxpayer’s control.

5 While some of the information and documents contained in the Information Notice may or may not have been outside Dr Breeze's power or possession, the Information Notice was not appealed to the tribunal on that or any other ground. In any event, we found no evidence that Dr Breeze or Freeman & Co had made any effort to request such information or documents from the Trust.

*Decision*

25. For the reasons given above, the appeal against the penalty is dismissed.

*Rights of appeal*

10 26. 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  
15 notice.

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**TRIBUNAL JUDGE: THOMAS SCOTT**  
**RELEASE DATE: 26 NOVEMBER 2015**