



**TC06122**

**Appeal number: TC/2016/06251**

*INCOME TAX – Notice to taxpayer under Sch 36 FA 2008 – private bank statements and year-end debtors balance reconciliation – appeal on grounds that all relevant information provided, private bank statements not relevant or debtors reconciliation reasonably required – held items either part of “statutory records” and/or reasonably required by HMRC for checking taxpayer’s tax position – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ENVIIOUS BRIDAL**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE HEIDI POON  
MR IAN MALCOLM**

**Sitting in public at the Tribunal Centre, 126 George Street, Edinburgh on 2 May  
2017**

**Mr Brian Cairney of BCAS Accountants Ltd for the Appellant**

**Mr Matthew Mason, Presenting Officer of HM Revenue and Customs, for the  
Respondents**

## DECISION

### Introduction

1. Ms Irene Milligan traded as Envious Bridal (the appellant). The appellant was in  
5 the business of supplying wedding dresses, accessories and communion dresses until  
it ceased trading as of 31 January 2016.

2. The appellant was represented by Ms Milligan's accountant, Mr Cairney.

3. The appeal is against an Information Notice ("the Notice") issued on 15 June  
2016 under paragraph 1 of Schedule 36 to the Finance Act 2008 ("Sch 36"). The  
10 items on the Notice come under two headings:

(1) **Statutory Records**

RBS Bank Statements for account number-1576 for the period 6 April  
2013 and 5 April 2014.

(2) **Documents reasonably required for checking tax position**

15 Sales reconciliation of the closing debtors figure at 5 April 2014.

4. The Notice was issued in consequence of the enquiry into Ms Milligan's self-  
assessment return ("SA return") for 2013-14. The enquiry commenced on 16 July  
2015, and the chronology of events is detailed as Appendix I to this decision.

### Issues for determination

20 5. The instant appeal is brought under Sch 36 para 29(1). There are two important  
aspects in relation to the right of appeal under Sch 36:

(1) First, the right of appeal is specifically removed under para 29(2)  
where the requirement is to give information or produce documents that  
form "part of the taxpayer's *statutory records*".

25 (2) Secondly, Sch 36 para 32(5) provides that the Tribunal's decision in an  
appeal under para 29 is *final*; there is no further right of appeal.

6. In respect of the RBS bank statements requested, the issue for the Tribunal to  
determine is whether the bank statements form "part of the taxpayer's statutory  
records". If the Tribunal finds the bank statements to be statutory records, then the  
30 right of appeal against that part of the information notice is removed. The result of  
that decision means that that part of the appeal must be struck out.

7. In respect of the sales reconciliation of the closing debtors figure at 5 April  
2014, the issue for the Tribunal to determine is whether the document is "reasonably  
required" under the terms of Sch 36 para 1. As related earlier, our decision in this  
35 respect is final with no further right of appeal.

8. The relevant excerpts of the legislation are included as Appendix II.

### **The Appellant's case**

9. The Notice of Appeal was lodged on 7 November 2016. The grounds of appeal would appear to be drafted by Mr Cairney, and are summarised as follows:

- 5 (1) That there was no notification of Officer Reilly's second visit to Ms Milligan, which took place a few weeks after the 4 September 2015 visit, either to Mr Cairney or to her lawyer.
- (2) That Ms Milligan was unrepresented during these two visits.
- (3) That full and extensive cooperation has been given and the request is not "reasonable" in accordance with Sch 36, para 1.
- 10 (4) That "we do not believe the personal bank statements will contribute any further information than the information already provided by the business records".

### **HMRC's case**

10. In the review decision given by letter dated 13 October 2016, the officer related  
15 the reasons for the items of information requested in the following terms:

"From your explanations it would appear that both your private account and the business account were used for the purpose of your business and as such both accounts would form part of the business records.

20 It is the responsibility of each individual to preserve and retain all records used in the preparation of the return as prescribed in s 12B of the Taxes Management Act 1970.

25 Unfortunately due to the circumstances outlined above the only records you can produce is the bank statements and as said since funds intended for the business were deposited in your private account and withdrawal from this account were transferred to your business account these statements form an integral part of your business records."

### **Discussion**

#### *Overview of the appellant's representations*

30 11. At the hearing, Mr Cairney made representations on behalf of the appellant, interspersed with comments from Ms Milligan, who declined to give evidence. The representations remain largely as assertions, since there is no evidence provided to support them, and we are unable to make any findings of fact therefrom.

35 12. Notwithstanding the forcefulness of the representations, the explanations proffered by Mr Cairney and Ms Milligan to rebut HMRC's concerns over the completeness and accuracy of the 2013-14 return suffer from a general lack of coherence and integrity. Elements in their representations remain inconsistent, implausible, and inexplicable, some of which are related in our following discussion.

*Key issues identified from the enquiry*

13. The enquiry which commenced on 16 July 2015 identified two key issues in Ms Milligan's business records relating to the return period ended 5 April 2014.

5 (1) The first issue concerns the discrepancy of **£13,182.41** in the turnover figure reported in the SA return of £76,874 against the total of £90,056.41 captured by the Merchant Acquirer database for the same period.

(2) The second issue concerns the discrepancy of **£16,526** between the returned sales of £76,874 and the total bank lodgements into the business account (RBS-4378) of £93,400.

10 *Issues arising from the representations*

14. The existence of a loan is prominent in the explanations offered for these discrepancies. The various accounts of this loan given by Ms Milligan and Mr Cairney appear to be riven by inconsistencies, such as (§ para in Appendix I):

15 (1) On 4 September 2015, the loan figure was £14,000 as related by Ms Milligan in the meeting with Officer Reilly (§7).

(2) On 3 November 2015, Mr Cairney tried to explain the discrepancy in the turnover of £13,182 and stated the figure of £11,460 as "attributable to the loan", leaving the balance of £1,721 unexplained (§10).

20 (3) On 2 February 2016, Mr Cairney changed his position by attributing the discrepancy of £13,182 as entirely to a loan (§16).

(4) On 29 March 2016, Mr Cairney's position changed yet again to state the loan figure as £14,000 and £2,526 as the opening debtors (§19).

25 15. The loan was used to explain the first discrepancy to begin with, but as the enquiry progressed, the loan was also used to explain the second discrepancy. Mr Cairney claimed that £14,000 of the unexplained bank lodgements was attributable to the loan, leaving the difference of £2,526 as opening debtors (sales made in 2012-13 with payment received in 2013-14). It is for this reason that Officer Reilly, who conducted the enquiry, requested the sales reconciliation of the closing debtors figure.

30 16. Not only has the actual figure of the loan changed more than once, the latest explanation proffered by Mr Cairney on 29 March 2016 would seem to contradict directly the payment policy stated by Ms Milligan on 4 September 2015. She informed Officer Reilly that customers paid upfront – that the total cost of a wedding dress needed to be paid for before an order was placed. If that was the case, then presumably there should be no debtors being carried at any one time.

35 17. We should add that the payment policy as stated by Ms Milligan is credible to us, and accords with the expected business practice for the purchase of bespoke items such as wedding dresses. We wonder why Mr Cairney's account of the debtors balance being the answer to part of the discrepancy came into the discussion at such a late stage of the enquiry, if it should have been so obvious as an explanation.

18. Regarding the £14,000 being a loan, Ms Milligan had informed HMRC that it was from a friend, a Ms J Nibloe. There was no formal agreement to document the loan. Ms Milligan was able to give the address and postcode of the seamstress she used, but we find it quite implausible that she was unable to “recall” the address of Ms Nibloe, who treated her “like a daughter”, she told the Tribunal.

19. Ms Milligan said the £14,000 was paid to her in two sums, first as £4,000 by cash in July 2017 and then £10,000 by cheque in August 2017 to help her with the business. Excerpts of two entries in the RBS-1576 account (Ms Milligan’s “personal” bank account) were provided to HMRC in relation to the £14,000. The first entry of £4,000 was from a Mr G Menzies, who Ms Milligan told the Tribunal is her step-father, and that the money somehow had to go from Ms Nibloe via her step-father before being credited to her personal bank account.

20. The elements presented in Ms Milligan’s account of this personal loan include: an absence of a loan agreement to set the duration of the loan, or to give the lender any recourse or security; the loan was advanced without any cost of borrowing as a pure largesse; the enigma surrounding the supposed benefactress; the involvement of a third party in the transaction; the purported reason for advancing such a loan which did not materialise; (there is no evidence to support that the business required the injection of capital to keep afloat at that time).

21. “Neither a borrower nor a lender be; / For loan oft loses both itself and friend”. This well-known saying encapsulates how fraught a loan relationship can be in an informal context. We have considered Ms Milligan’s account of the loan given to us with due regard, especially in respect of the provenance and the reason of these two significant deposits into Ms Milligan’s RBS-1567 account; the account of the loan remains to us largely implausible.

22. At the centre of the information requests are the two discrepancies when compared with the returned sales of £76,874. The first discrepancy of £13,182 arises from corroborating with transactions captured by the external database from the Merchant Acquirer. The other discrepancy of £16,526 arises from comparing the total bank lodgements against the returned sales figure.

23. The appellant has attempted to explain *both* discrepancies by way of a loan, but certain elements remain to us inexplicable, such as:

(1) The supposed loan deposits of £14,000 were lodged into the RBS-1576 account, not into the RBS-4378 account, which simply cannot explain towards the £16,526 discrepancy arising from the -4378 account.

(2) Mr Cairney then offered the explanation that the £14,000 was injected into the business account by Ms Milligan using her bank card to transfer funds from RBS-176 account into the RBS-478 account and these transfers would have been captured by the Merchant Acquirer data.

(3) From the bank statements provided on RBS-478 account (and excerpts of which produced in the bundle for the Tribunal), no credit lodgements by card payment from Ms Milligan’s account could be identified.

(4) The funds from the RBS–1576 account were transferred by DPC, which stands for “digital transfers by personal computer”; i.e. online banking. These credit lodgements were inter-account transfers that would not have been captured by the Merchant Acquirer database and do not explain the discrepancy of £13,182.

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24. In respect of RBS–4378 account, the discrepancies, that of £13,182 referential to the Merchant Acquirer data, and that of £16,526 referential to the total bank lodgements, remain resolutely unconnected. As HMRC repeatedly pointed out, the Merchant Acquirer’s data are of an external source, unrelated to the bank lodgements are taken from the bank statements alone. The representations have tried to conjoin the two discrepancies, and explain both discrepancies by way of a loan. Having considered the representations carefully, the two discrepancies remain unexplained.

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25. Separately, it remains to be established whether the £14,000 credited to the RBS–1576 account represents income or is indeed a loan.

15 *Whether the bank statements from RBS-1576 account “statutory records”*

26. In the present appeal, the definition of “statutory records” is by reference to s12B of TMA, and subs-s 12B(1)(a) states that where a person is required to complete a return, he shall “keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return or the year or period”.

20

27. It has been asserted to us that the bank account RBS–1576 is a personal account of Ms Milligan’s and as such the account is not part of the statutory records of the business. Notwithstanding the chosen designation of one account as the “personal” account, and that Ms Milligan traded as Envious Bridal, the business was hers; she was the sole proprietor; and both RBS accounts are under her sole name.

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28. It has become a central issue in this enquiry to ascertain whether business income has been lodged into the supposedly personal account. This is a key question that HMRC need to address before any possible closure to the enquiry. Furthermore, during the enquiry period, funds were regularly transferred from RBS–1576 account into the RBS–4378 account to fund business expenditure, but there appeared to be no regular sums of drawings from the business account to fund personal outgoings other than small items such as purchases from supermarket and clothing stores.

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29. Quite apart from these unanswered questions, the appellant’s numerous accounts as regards the transactions between the personal and business bank accounts have rendered the so-called personal RBS–1576 account an indispensable operational part of the business. For these reasons, the statements from the RBS–1576 account form part of the “statutory records” of Ms Milligan’s business.

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*Whether the bank statements from RBS-1576 account “reasonably required”*

30. HMRC do not need to rely on the bank statements being “statutory records” to request for their production. Even if we were to find that the bank statements were not

“statutory records”, they remain “reasonably required” to check Ms Milligan’s tax position for the year of enquiry.

31. HMRC have laboured over the discrepancies they identified from the bank statements of RBS–4378 account, and have only been provided with printouts to show the entries of the £14,000 supposed to be a loan from RBS–1576. The appellant has repeatedly referred to transactions from the RBS–1576 to explain the discrepancies. These explanations have raised more questions than they answered. Without the bank statements from the RBS–1576 account, HMRC simply cannot arrive at their own conclusion of the origin, the veracity, and the extent of how these discrepancies arose.

10 *Whether reconciliation of closing debtors figure “reasonably required”*

32. Insofar as Mr Cairney has relied on opening debtors figure for 2013-14 to explain part of the discrepancy arising from the bank lodgements, HMRC are entitled to request the closing debtors figure to complete their check before they can be satisfied that the sales figure returned of £76,874 is complete and accurate.

15 **Decision**

33. Based on the reasoning set out above, we find that the items of information requested are respectively “statutory records” and “reasonably required”.

34. Under the terms of paragraph 32(5) of Schedule 36 to FA 2008, the Tribunal’s decision in relation to the Schedule 36 Notice is final with no further right of appeal.

20 35. In accordance with the powers of the Tribunal under paragraphs 32(3) and (4) of Schedule 36, we confirm the Information Notice as served on the appellant and specify that the items of request must be complied with:

25 (1) For the production of the bank statements for the RBS–1576 account for the period from 6 April 2013 to 5 April 2014, within 2 weeks of the issue of this decision; and

(2) For the production of the reconciliation of the closing debtors figure at 5 April 2014, within 3 weeks of the issue of this decision.

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

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**DR HEIDI POON  
TRIBUNAL JUDGE**

**RELEASE DATE: 23 SEPTEMBER 2017**

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## Appendix I

### Factual background

#### *Compliance check into 2013-14 SA return*

- 5 1. On 16 July 2015, HMRC opened a check into Ms Milligan's SA return for the year 2013-14. The compliance visit was scheduled for 4 September 2015.
2. On 3 September 2015, Mr Cairney phoned Officer Reilly to advise that he had prepared the 2014 SA return using records maintained on SAGE by Milligan; that her son had deleted the SAGE program from her laptop; that data remained lost  
10 (unrecoverable) when the program was restored.
3. On 4 September 2015, Officer Reilly met with Ms Milligan at her business premises. The meeting notes were sent out to Ms Milligan and Mr Cairney, with a covering letter of the same date.

#### *The meeting notes of 4 September 2015 and follow up*

- 15 4. Officer Reilly visited Ms Milligan at 2pm on 4 September 2015. The phone call from Mr Cairney the previous day to advise of the irretrievable loss of data on SAGE was related to Ms Milligan, and that Mr Cairney confirmed that he had completed the 2014 return using the bank statements and the original invoices.
5. Ms Milligan advised that most of the records were available but she had  
20 shredded all her business bank statements after return preparation, but would try and print them online. The RBS bank statements for account-4378 were uploaded for Officer Reilly to review in her office.
6. Ms Milligan advised that dress samples were provided by suppliers, and customers selected from the samples for specific dress orders to be made up, which  
25 would take 6-9 months from order to delivery. Dress orders could only be processed with full payments received. The payments were made by telephone banking or direct into Milligan's business account. The payments would show on the RBS bank statements against the brides' names.
7. During the meeting, Ms Milligan advised that she obtained a loan of £14,000  
30 from a friend, a Ms J- Nibloe – but she could not recall her address. She further advised Officer Reilly that £4,000 was received in a cash in July 2013, and a further £10,000 received by cheque. There was no formal agreement, but that Ms Nibloe would like to have the loan repaid. Ms Milligan advised that she hoped to buy her mother's house and borrow against that to repay the loan.
- 35 8. In contrast to Ms Milligan's inability to recall Ms Nibloe's address, we note she was able to provide the exact address (with postcode) of the self-employed seamstress



Thompson the business used for dress alterations; the details were recorded by Officer Reilly in her meeting notes.

9. Ms Milligan's 2013-14 tax return stated a turnover of £76,874. Officer Reilly advised that she had received information from World Pay, confirming payments processed for 2014 totalled £90,056.41 and asked if Ms Milligan knew of any reason for the discrepancy of £13,182. Ms Milligan said she did not know and Officer Reilly said she would discuss with Mr Cairney.

10. On 9 October 2015, Officer Reilly telephoned Mr Cairney about the discrepancy in takings. On 3 November 2015, Mr Cairney wrote to advise:

10 'As we have indicated in our telephone conversations we accept the discrepancy of £13,182.00 in reported turnover as reconciled against the merchant's data you obtained. However we have explained this discrepancy relates to a loan received to help the business meets its liabilities and does not represent sales income.

15 We have identified £11,460 that can be proved to be attributable to the loan. This leaves us with a shortfall of £1,721.84 which cannot really explain, without further extensive analysis.'

*Correspondence leading to the issue of the Information Notice*

11. On 26 November 2015, Officer Reilly wrote to Mr Cairney in reply. She identified the two issues that remained her concerns. Firstly, the turnover discrepancy of £13,182. Secondly, where the loan has featured in the appellant's business records. She also pointed out the discrepancy in the loan figure of £11,460 in Mr Cairney's letter, and of £14,000 according to Ms Milligan's account on 4 September 2015.

12. On 17 December Mr Cairney replied, (letter not included in the hearing bundle).

13. On 30 December 2015, Officer Reilly wrote in response, and highlighted that the £14,000 referred to as loan would be "external to Merchant Acquirer details held", and therefore would not account for the sales discrepancy still to be resolved.

14. Officer Reilly's December 2015 letter listed the following information to be provided to her to complete her check by 20 January 2016:

30 (1) Sales reconciliation / link paper explaining fully how the turnover of £76,874 was arrived at.

35 (2) By what means were the funds of £14,000 from Ms Nibloe introduced into the business – that she would need to see the bank statements in Ms Nibloe's name confirming the withdrawal of £14,000 and of the receiving account statements for the 12-month review period to 5 April 2014, since the funds do not appear on the statements of the RBS business account.

15. On 20 January 2016, Officer Reilly wrote to renew the request for information, to be provided by 21 February 2016.

16. On 2 February 2016, Mr Cairney replied, reiterating that the £13,182 discrepancy in the sales was a loan, and that:

(1) “the loan was deposited in [Ms Milligan’s] personal account and transferred to her business account at various points”;

5 (2) “that the analysis of the business account shows the deposits from her personal account ending –1576 to be £11,460”;

(3) “that the difference between £13,182 and £11,460 represents refunds and cash deposits”.

17. Mr Cairney’s letter also advised that Ms Milligan ceased trading as of 31 January 2016. The letter enclosed two excerpts of Ms Milligan’s bank statements showing entries: (a) on 19 July 2013 from “G– Menzies” deposit of £4,000, and (b) on 1 August 2013, a C/R transaction from –2142 of £10,000.

18. On 2 March 2016, Officer Reilly wrote in reply that she was unable to complete her enquiry and raised the following questions for further clarification:

15 (1) Mr Cairney had explained that the amount processed through the RBS business account was £93,400, of which £14,000 was loan, to arrive at the turnover of £76,874 per SA return. On this basis, why was the turnover figure not £79,400 but the £76,874 as reported?

20 (2) The Merchant Acquirer had confirmed that £90,056.41 was processed in the period 6 April 2013 to 5 April 2014 through the electronic terminal in Ms Milligan’s shop. The total transactions are external to the bank account and has no bearing on the inter-bank account transactions. The minimum sales position should therefore be the Merchant Acquirer transactions plus any further cash sales.

25 (3) The inter-account transfers between Ms Milligan’s principal RBS business account – 4378 and secondary account –1576 need to be reconciled and the bank statements for –1576 are therefore required.

19. On 29 March 2016 Mr Cairney wrote in reply to the three questions raised by Officer Reilly:

30 (1) That the difference of £2,526 could relate to sales earned in March and paid in April, “commonly referred to as debtors”, he wrote.

(2) That on more than one occasion, the electronic machine was used to deposit into the business bank account by using the visa card from the personal account and inserting it into the electronic payment machine.

35 (3) That sufficient information has already been provided.

20. On 13 April 2016, Officer Reilly wrote in reply, accepting the figure of £2,526 as opening debtors, and requested a reconciliation of the closing debtors figure at 5 April 2014. Officer Reilly also accepted the explanation that Ms Milligan used a visa card was used to transfer funds from account –1576 to –4378, and requested that the bank statements for –1576 covering the review period to be provided.

21. On 25 April 2015, Mr Cairney replied in a short letter asserting that HMRC had sufficient information to conclude that the sales figure in the SA return is correct.

22. On 12 May 2015, Officer Reilly reiterated that she needed to understand the inter-account activities between –1576 and –4378 during the review period to complete her enquiry. She confirmed that subject to the sales reconciliation of debtors, and if no issues were to arise from the person account statements, then she would be able to close the enquiry. She requested the information to be provided by 10 June 2016, failing that a formal Sch 36 Notice would be issued.

23. On 7 June 2016, Mr Cairney wrote in reply without providing the information and stated that ‘the best course of action is to issue the Sch 36 notice which we will vigorously challenge at the tribunal’.

24. On 15 June 2016, the information notice was issued. On 15 July 2016, Mr Cairney appealed to HMRC, stating as the main ground that the RBS statements fall into the category of information that cannot be requested as ‘personal’ data.

15 *Appeal to HMRC and internal review*

25. On 28 July 2016, Officer Reilly wrote to Ms Milligan in respect of the appeal against the information notice, stating that the bank statements were requested since:

(1) she could not verify the source of the funds deposited into RBS-1576 account, namely £4,000 deposited on 19 July 2013, and £10,000 on 1 August 2013 per the printouts provided.

(2) Nor could she trace the funds being transferred into the business account –4378.

(3) That Mr Cairney had advised that the loan of £14,000 was deposited in the business bank account using the visa card from the personal account by electronic payment machine, and that she required the bank statements to verify that this was what happened.

(4) That the difference of £13,182 between £90,056 as per World Pay and the £76,874 recorded as sales in the return could be related to debtors account according to Mr Cairney and hence the request for documentary evidence to confirm.

26. On 4 August 2016, Mr Cairney accepted the offer of a review from Officer Reilly, stating the ground of appeal as: ‘your request is unreasonable, disproportionate and unnecessary’.

27. On 13 October 2016, the review conclusion was issued. The review officer confirmed the items on the Notice as “statutory records” and “reasonably required”.

28. On 7 November 2016, Ms Milligan lodged her appeal with the Tribunal.

## Appendix II

### The legislative framework

#### *Schedule 36 to FA 2008*

5 1. 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') –

(a) to provide information, or

(b) to provide a document,

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

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

15 “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**. ...” (emphasis added)

20 3. 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 –

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

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

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

...

(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**.” (emphasis added)

30 4. 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 –

35 (a) the Taxes Acts, or

(b) any other enactment relating to a tax,

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

5 (b) is not also required to be kept or preserved under or by 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.

10 (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.”

*Taxes Management Act 1970*

5. The taxpayer’s obligations to keep records are provided under s 12B of TMA, of which the relevant excerpts for the purposes of this appeal are:

15 **“12B Records to be kept for purposes of returns**

(1) Any person who may be required by a notice under section 8, 8 or 12AA of this Act to make and deliver a return for a year of assessment or other period shall –

20 (a) keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return or the year or period; and

(b) preserve those records until the end of the relevant day, that is to say, the day mentioned in subsection (2) below or, where a return is required by a notice given on or before that day, whichever of that day and the following is the latest, namely –

25 (i) where enquiries into the return are made by an officer of the Board, the day on which, ... those enquiries are completed; and

30 (ii) where no enquiries into the return are so made, the day on which such an officer no longer has power to make such enquiries.

(2) The day referred to in subsection (1) above is –

35 (a) in the case of a person carrying on a trade, profession or business alone or in partnership or a company, the fifth anniversary of the 31<sup>st</sup> January next following the year of assessment or (as the case may be) the sixth anniversary of the end of the period; and

(b) otherwise, the first anniversary of the 31<sup>st</sup> January next following the year of assessment ...”