



**TC06140**

**Appeal number: TC/2016/02393**

*INCOME TAX - PROCEDURE - Information Notice - Schedule 36 Finance Act 2008 - Whether a check or an enquiry? - A check - Disparity between declared turnover and lodgments - Tax return filed - Whether Condition B satisfied? - Yes - Whether documents and information reasonably required? - Yes - Whether provision of redacted bank statements sufficient compliance? - No - Appeal dismissed - Information Notice confirmed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR KULDIP SINGH NIJJAR**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER MCNALL**

**Sitting in public at Bradford Magistrates' Court, The Tyrls, Bradford BD1 1LA  
on 17 August 2017**

Mr Taher Nawaz, Accountant, of T Nawaz & Co for the Appellant

Mr Alan Hall, an HMRC litigator, of HMRC's Appeals and Reviews Office, for the Respondents

## DECISION

1. This appeal was made on 28 April 2016, and is against the Information Notice (issued under cover of a letter dated 21 March 2016, and which appears at page 1.29 of the hearing bundle, and which was upheld on departmental review on 21 June 2016).

### *Background*

2. It is appropriate to give a little background. This appeal was originally listed before me in Manchester on 28 November 2016. But, on that occasion, having heard some submissions on behalf of both parties, and without having heard any evidence, I was persuaded by the parties not to proceed to hear the appeal, but instead to draw up directions (issued on 30 November 2016) which recorded that the parties had reached an accord.

3. Unfortunately, a disagreement between the parties then emerged as to whether they had reached an agreement or not, and the appeal was accordingly restored to be heard before me. I set this out simply in the interests of transparency, and to reassure both parties that I have had no regard to this aspect of its history in determining this appeal substantively. Put colloquially, and whilst perhaps trite, 'we are where we are'. I make no findings as to whether there was any misunderstanding, and if so, who, if anyone, was responsible for it. It is not relevant to the decision which I now have to make.

4. Mr Nijjar is a partner in a grocery business which trades as 'Samra Brothers'. It is largely a cash business, selling goods, but also operating Paypoint and Camelot terminals / facilities.

5. HMRC is conducting a check on the partnership's tax affairs for the year ending 5 April 2012. It believes that it is possible that profits may have been understated.

### *A check or an Enquiry?*

6. The first issue is whether this is genuinely a check or is an enquiry.

7. I accept the unequivocal submissions of Mr Hall, coupled with the unequivocal evidence of Officer Hopkins, that the present exercise is a check and not an enquiry.

8. The taxpayer notice issued under FA 2008 Schedule 36 is one issued '*for the purpose of checking the taxpayer's position*'. Both parties drew my attention to Schedule 36 Para 58 which reads '*In this Schedule - "**checking**" includes carrying out an investigation or enquiry of any kind*'. To my mind, it is clear that Para 58 does not restrict the giving of a taxpayer notice to circumstances where there is an enquiry. The statutory definition of 'checking', and particularly its use of the word 'includes', is expressly illustrative of the circumstances in which a taxpayer notice can be given. It is not an exhaustive list of the circumstances in which a taxpayer notice can be given.

9. I find that HMRC is not conducting an enquiry within the meaning and effect of TMA 1970 ss 8 and 9A. Hence, I reject the taxpayer's argument that HMRC's activity

is outside the time allowed by TMA 1970 s 12AC(2). It is not, since TMA 1970 s 12AC(2) applies to enquiries, and not to checks.

10. It follows that there is no jurisdiction to order an enquiry to be closed. I have arrived at this decision on the basis of the submissions made to me, but it is appropriate to record that Judge Jonathan Richards, in response to an application by HMRC that the appeal should be struck-out, arrived at the same conclusion in relation to this point in August 2016, communicated to the parties on 9 August 2016, namely that this is an appeal against an information notice, and not an application for a closure notice.

11. I simply do not consider this to be a question of semantics, with HMRC conducting an enquiry, but under a 'false flag' so as to avoid the Tribunal's power to order it to close its enquiry.

***Whether 'reason to suspect': Condition B***

12. Since a tax return for the relevant year was made on 31 January 2013, then this is a taxpayer notice following a tax return. As such, HMRC cannot give a taxpayer notice for the purpose of checking the appellant's income tax position in relation to the chargeable period unless (and relevant to this appeal) 'Condition B' is met: see FA 2008 Sch 36 Para 21(1) and 21(6), namely:

"as regards the person, an officer of Revenue and Customs has reason to suspect that -

(a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,

(b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or

(c) relief from relevant tax given for the chargeable period may be or have become excessive".

13. This requirement is satisfied in this case. Indeed, it was accepted by Mr Nawaz in his closing submissions that the ostensible disparity between the taxpayer's declared turnover (approximately £350,000) and the amount banked (£511,000) gave rise - at that time - to a 'reason to suspect' within the proper meaning of Condition B.

14. I should add that the lodgments being received by the Appellant were from a bank account of a third party, Mockingbird Enterprises. It was said that this manner of proceeding was because Mockingbird was liable for lower bank charges than the taxpayer for the processing of cash.

15. Even had Mr Nawaz not conceded the point, I would have come to the same conclusion. In my view, the disparity between the lodgments and declared turnover was a non-trivial one (over £150,000, or about 40% of declared turnover) and it was reasonable for the officer, at that time, to suspect (and only suspicion is called for - in the sense of to have suspicions or doubts, or to imagine something to be possible: Condition B does not require knowledge) that an amount that ought to have been assessed may not have been assessed. That is the officer's evidence (see Paragraph 15 of his first witness statement) and is the basis upon which HMRC puts its case.

16. It seems to me that conclusion holds good notwithstanding Mr Nawaz's point that the declared turnover of the business, year on year, was relatively consistent.

***Whether reasonably required?***

17. That means that the remaining question for me to decide in this appeal is whether the information or document "*is reasonably required by the officer for the purpose of checking the taxpayer's position*": see FA 2008 Sch 36 Para 1(1).

18. The information notice calls, in relation to the accounting period ended 5 April 2012, for:

"All bank statements, whether personal or business, and either jointly or solely held, that business takings were paid into (or business expenses were paid out of)

The business cash book

A copy of the rental agreement and all income received for any properties owned.

Till rolls generated by the business"

19. It is asserted that there is no business cash book, and no till rolls. The point about the rental agreement and income from properties involves, on the face of it, a relatively modest amount of money, and is subsidiary.

20. The principal issue in dispute is whether the taxpayer should provide *unredacted* bank statements. He has already, after the last hearing, provided *redacted* bank statements, which show Camelot and Paypoint entries. Furthermore, and in relation to these statements, Mr Nawaz's firm has produced a breakdown - which HMRC accepts is arithmetically consistent with the unredacted entries - which apparently, or on the face of it, could explain the £511,000. For example, in the year to 30 September 2011, there are sales of about £349,000, together with VAT (£59,162), 'Paypoint' (£163,080), 'Camelot' (£86,235), 'Commissions received' (£10,869) and rental income (£19,914).

21. Those come to £688,431, which, arithmetically, is well in excess of the £511,000 transferred to the taxpayer by Mockingbird Enterprises. On that footing, Mr Nawaz argues that, given that the taxpayer can explain receipts greater than £511,000, that, having so done so, that nothing further is reasonably required by the officer for the purpose of checking the taxpayer's position. Hence, he argues, the taxpayer notice does not satisfy Sch 36 Para 1(1).

22. The officer's explanation for the need to see unredacted statements is so that the officer can see, in full, without redaction, what transactions are occurring. His explanation is that this would allow him to see (for example) what the partnership's costs paid out directly from the bank account are, allowing the officer 'to build up a picture of what is paid for from the bank account and what would have been paid using cash'.

23. Officer Hopkins' oral evidence before me was coherent and rational. It was consistent with his witness statement in which he outlines three potential scenarios, in summary: (i) the £511,000 includes lottery and Paypoint receipts, and so the self-assessment is correct; (ii) the £511,000 does not include lottery and Paypoint receipts,

and represents all taxable receipts, and therefore should replace the declared turnover figure; or (iii) the £511,000 represents receipts omitted from the self-assessment entirely, and therefore should supplement the turnover figure in the accounts. The officer asserts, on that spread of potential analyses, that there is a definite risk that tax may not have been assessed.

24. I find that analysis to be both reasoned, and reasonable.

25. I take into account the fact that the information notice, insofar as it relates to the bank statements, is against the background of the taxpayer's stance that there is no cash book, and no till rolls.

26. It seems to me that the unredacted bank statements are reasonably required, within the meaning and effect of Sch 36 Para 1(1). They relate to the partnership's trade and income and will have a direct bearing on entries in the partnership's tax returns.

27. It was not argued that production of the unredacted statements would be onerous, and indeed such an argument seems untenable given that the taxpayer's representatives have already seen the unredacted statements for the purposes of redacting them.

28. I am not persuaded by the argument, put forward with some vigour by Mr Nawaz on behalf of the taxpayer, which, in essence, is an argument that the greater sum - said to be £688,000 - must inevitably include the lesser.

29. In my view, this argument is not well conceived since the check is not simply as to the figures pure and simple, but is also to the provenance (whether cash, or otherwise) and/or the movement of moneys. In that sense, it is to some degree a qualitative, as well as a purely quantitative, exercise.

30. In my view, the redacted statements, even taken together with the breakdown which has been proffered (coming to a sum well in excess of £511,000) still do not adequately or satisfactorily explain the provenance or composition of the £511,000. I disagree with Mr Nawaz that 'more than enough has already been provided'.

31. All that the redacted statements and breakdown show, taking them at their highest, is that some part of the £511,000 is potentially made up of Paypoint and Camelot receipts. But the rest of the sums, and the moneys, and the composition and provenance or them, remain hidden behind the redactions, and cannot be scrutinised.

32. In essence, the officer is being asked to infer, almost as a matter of faith, that the other figures (if revealed) would correlate with and/or (if revealed) would substantiate the breakdown. I do not consider this to be an appropriate position for the taxpayer to adopt. As matters stand, I agree that there is pervasive uncertainty - described by Mr Hall as 'a cloud of unknowing' - in relation to this taxpayer's affairs. The officer is entitled, in the exercise of his office, to conduct his check on the basis of empirical evidence, and not on the basis of inference, or faith.

33. The claimed absence of any cash book and till rolls reinforces me in my conclusion. This is because, as it stands, the bank statements are the principal resource for checking the taxpayer's figures. The redactions prevent this check from being conducted. The bank statements must be provided in an unredacted form.

34. In relation to the requirement of Sch 36 Para 1, I have reflected carefully on whether the apparently broadly consistent year-on-year turnover of the taxpayer's business has any bearing on the question of reasonableness. I have concluded that it does not, for the reason that this check concerns the ostensible disparity between lodgments and declared turnover in a particular year, and the reasonableness of the requirement is not dispelled by the apparently consistent turnover. That is only one factor in the wider overall picture.

**Conclusion**

35. I confirm the Information Notice as it stands, including in relation to the cash book and the till rolls. If, as is said in correspondence, those do not exist, or have never existed, then the taxpayer can state so formally in his response. The appeal is accordingly dismissed.

36. Having confirmed the information notice, I specify that the taxpayer should comply with it within 30 days of the date of issue of this Decision. The unredacted bank statements should reasonably be available.

37. This document contains my full findings of fact and reasons for my decision.

38. Pursuant to FA 2008 Sch 36 Para 32(5), and notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement 2007, my decision on this appeal, being an appeal brought under Part 5 of Schedule 36, is final. There is no right of appeal against this decision.

**DR CHRISTOPHER MCNALL  
TRIBUNAL JUDGE**

**RELEASE DATE: 02 OCTOBER 2017**

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