



[2022] UKFTT 00116 (TC)

TC 08447/V

INCOME TAX – information notices issued under Schedule 36 Finance Act 2008- whether reasonably required – yes – whether HMRC officer had reason to suspect – yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal numbers: TC/2020/01007
TC/2020/01008**

BETWEEN

**NICHOLAS GILMORE
BARBARA GILMORE**

Appellants

-and-

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

Respondents

**TRIBUNAL: JUDGE NIGEL POPPLEWELL
DR CAROLINE SMALL**

Hearing conducted remotely in public by video on 7 March 2022

Tawhid Islam of Islam & Co for the Appellants

Charles Asuelimen Officer of HM Revenue & Customs for the Respondents

DECISION

INTRODUCTION

1. This case concerns information notices (the “**notices**”) issued under the provisions of Schedule 36 to the Finance Act 2008 (“**Schedule 36**”) to the appellants by the respondents (or “**HMRC**”) on 20 November 2019.

2. The issues can be simply stated. Under Schedule 36, notices may be issued by HMRC which require a taxpayer to produce a document or provide information if the document or information is reasonably required by an HMRC officer for the purpose of checking a taxpayer’s tax position. Where the taxpayer has made a tax return, one of a number of further conditions must be met. The relevant ones in this case are that HMRC have opened an enquiry into a taxpayer’s return (“**Condition A**”), or (“**Condition B**”) that an HMRC officer has reason to suspect that an amount which ought to have been assessed to tax has not been so assessed to tax (“**reason to suspect**”). The focus in these appeals concerns whether the notices were reasonably required, and whether an HMRC officer had reason to suspect.

3. HMRC’s position is that an analysis of the accounts, payroll records, timesheets and bank statements from a company owned by the appellants (G & S Transport (Merseyside) Ltd (the “**company**”)) suggested that employees had been paid wages, subsistence payments and expenses in larger amounts than could be justified by payments from the company. In their view the source of these payments was the appellants who must, therefore, have an independent source of income which they have not declared in the tax returns for the tax years ending 6 April 2015, 2016, 2017 and 2018. The appellants’ position is that HMRC have misconstrued the information, and that the company had adequate resources to pay the wages, subsistence payments and expenses either directly from its bank account, or indirectly by making payments to the appellants by way of director loans which the appellants then paid, in cash, to the employees.

4. We emphasise that our role is not to decide between these two competing positions. It is to decide, in essence, whether the appellants are obliged to provide the information required by the notices.

THE LAW

5. The relevant provisions of Schedule 36 are set out in the Appendix to this Decision.

THE EVIDENCE AND FINDINGS OF FACT

6. We were provided with two bundles of documents, which were described as the hearing bundle and a supplementary bundle. Included in the supplementary bundle were a number of witness statements from employees of the company. These were, in the main, accepted by HMRC and taken as read. Those witnesses did not, therefore, attend the hearing. Officer Roberts gave oral evidence on behalf HMRC, and Nicholas Gilmore gave oral evidence on behalf of the appellants. From this evidence we find the following:

Background

(1) Officer Roberts opened a compliance check into the company on 23 November 2017 relating to the accounting period ended 30 September 2016 and issued a schedule 36 information notice to the company on 29 December 2017.

(2) On 29 January 2019 Officer Roberts telephoned the company explaining that unless he had some response, he would have to issue a schedule 36 penalty. He received a call from the appellants' agent (Islam & Co) on the same day who asked for further time to deal with the request. On 5 February 2019, the agent complied with the information notice.

(3) Officer Roberts noticed a number of anomalies from the records. On 15 March 2018 he asked the agent to send further records and agreed a meeting with the agent for 30 April 2018, which meeting was subsequently moved to 24 May 2018. On that date, Officer Roberts and a colleague visited the agent's premises. It seems that the appellants were present, and there was a discussion about large sums being drawn from the bank as cash which were explained to be wages for the staff. Officer Roberts inspected the records made available to him at the meeting following which he asked for further information (ledgers) to be sent to him. Following a further exchange of emails, Officer Roberts, on 2 October 2018, gave the agent a deadline of 31 October to send the requested records. The agent responded by indicating he would start sending the records to Officer Roberts by 5 November 2018 but following the sending of a test email on 6 November 2018, the records were not sent.

(4) On 8 February 2019 Officer Roberts emailed the agent to that effect.

(5) A meeting was agreed for 11 April 2019 when Officer Roberts and a colleague attended the agent's premises in Liverpool to review the records. The cash withdrawals from the bank for payments of drivers' nights out (subsistence) and for out-of-pocket expenses was discussed. According to Officer Roberts, those records did not explain cash issues or that the payments from the bank account to some of the staff seemed to match gross pay and not net pay. He requested timesheets and other prime records concerning wages. Following disclosure of those documents, Officer Roberts undertook a review of the wages' records, comparing them to the payroll, accounts, bank payments to staff and the cash withdrawn.

(6) Officer Roberts emailed the agent on 18 June 2019 with his findings from his review and his analysis including spreadsheets of his workings.

(7) We were provided with copies of those spreadsheets. They identify a number of employees (employees 1-26) and deal with the amounts paid as recorded on the time/control sheets, the amounts paid to that employee in cash, the gross and net pay figures for that employee and the payments made to that employee from the bank. These are comprehensive spreadsheets and runs to 105 pages. They also include 11 pages summarising the directors loan account and wages amounts, reconciled against possible cash payments to staff, likely cash withdrawals from the company bank account and possible cash payments to staff, attempted reconciliation of wages as per the accounts and as per the payroll, an attempt to reconcile tax differences including employee and employer national insurance contributions as well as income tax, and includes a recalculation of tax for each employee. From these Officer Roberts concluded that for the period 1 October 2015 to 30 September 2016:

(a) "The wages, PAYE and NI as per the accounts was £502,273. As per the payroll the figure was £514,357 and as per the timesheets, as calculated by me, the figure was £674,801. (HMRC calculations had been done net of known subsistence payments).

(b) Known subsistence payments were higher than those declared in the accounts. Only £3,785 noted in the accounts and those showing from the timesheets exceeding £15,000.

(c) An additional £61,220 of PAYE appeared to be due for the accounting period.

(d) The amount that appeared to be paid cash as per the time sheets/wages cover sheets was £155,395.

(e) The amount noted in the Directors Loan Account as a credit for paying cash wages, from amounts drawn as cash debited to the Directors Loan Account, was £93,200.

(f) Amount of cash that is drawn from the bank account totalling £160k with amounts noted as debits in the Directors Loan Account of £128k.”

(8) The agent responded to those documents on the same day and requested time to review them. The agent had difficulty getting documents from the appellants and notified Officer Roberts of this on 7 October 2019. Officer Roberts chased for a response but having received none by the deadline which he had given the agent of 14 October 2019, he opened enquiries into the tax returns of the appellants for the tax year ended 5 April 2018. The letter opening those enquiries is dated 17 October 2019 and it also included a request for information and documents which are set out below. It is this information and documentation which is requested by the notices, and is set out verbatim below:

- “1. Supply a list of all employments held in the period from 6 April 2014 to date
2. Supply all P60's from the period 6 April 2014 to date
3. Supply a list of all directorships held since the 6 April 2014 to date. Please include:
 - a. Name of company
 - b. Date became a director
 - c. If directorship ended then the end date of the directorship
4. Supply a list of all companies you have been a shareholder of since 6 April 2014. Please include:
 - a. Name of company
 - b. Date became a shareholder
 - c. If shares were sold the date sold and amount received for the shares
5. Provide all the dividend statements for the dividends you have received since 6 April 2014
6. Provide details of any other income you have received since 6 April 2014 to date that is not included under any other point in this schedule
7. Provide a list of all bank accounts that you are named on, jointly hold or have use of, wherever held in the world that you have held since 1 January 2000. Please include:
 - a. Name of bank
 - b. Name the account is in
 - c. Whether it is held in the UK or overseas

- d. If held overseas in which jurisdiction it is held in
- e. Account number

8. Please provide all statements, including e-statements, passbooks, paying in books, and cheque stubs for the period 6 April 2014 to date in respect of all bank, building society, investment company and credit card accounts, whether run through a branch, an agency, the internet or the telephone held in either your sole name or joint names, or otherwise under your power or control, held in the UK or elsewhere in the world.”

(9) Officer Roberts accepts that the date in item 7, of 1 January 2000 is incorrect and should be 6 April 2014 to match the dates in the requests for the other information and documentation.

(10) Having received no response, Officer Roberts issued the notices on 20 November 2019. On 20 December 2019 the agent responded stating that the opening enquiry notice was invalid to which Officer Roberts responded on 23 December 2019 indicating that as far as he was concerned, the enquiry notices were valid.

(11) On 13 January 2020 the agent appealed against the notices. On 6 February 20 Officer Roberts issued his view of the matter letter. On 6 March 2020 the appellants appealed to the Tribunal.

(12) Included in the supplementary bundle is a letter from the agent dated 15 January 2020 which responds to Officer Roberts’ email of 18 June 2019. That letter deals with a number of points and includes spreadsheets, directors loan account, cash withdrawals and payroll record reconciliations, an extract from a publication by the Road Haulage Association stating that it is wrong for HMRC to tell hauliers that they need to get proof of purchases from the drivers if they are going to pay an overnight subsistence up to the rates agreed with the Road Haulage Association, and statements from a number of employees setting out the cash reimbursements received between 1 October 2015 and 30 September 2016 (which were, for these employees, between £150-£200 per week on average). It is these latter statements which were formalised into witness statements and were taken as read in these proceedings. It is Officer Roberts’ evidence, which we find as a fact, that he did not receive the letter dated 15 January 2020, and the first time it came to his attention was when it was supplied to HMRC on 12 March 2021 in preparation for the original hearing which was scheduled to take place on 23 March 2021, and which was postponed.

(13) In cross examination, Nicholas Gilmore said that subsistence payments of £3,785 in the accounts was “ridiculous”, and that the actual figure was around £100,000 and that there was a substantial discrepancy between what was in the accounts and what was actually paid. His evidence was that the average payment for a night out is £22 per night and he agreed that about £100,000 had been paid to the drivers. Furthermore, that amount would have come from the company. He accepted that the figure in the accounts was incorrect and that the accounts were unreliable on this point. In response to questions from the Tribunal, he said that he did not consider it would be particularly onerous to obtain the documents. He would ask his agent for those relating to tax and his bank for the bank statements.

(14) It is clear from the evidence that Barbara Gilmore, a very intelligent and strong woman, seemed, around the time of the 2016 company accounting period, to be becoming forgetful and making errors in her work. In June 2017 the signs of forgetfulness and confusion were becoming more prominent and it seemed there was a possibility of hereditary dementia. In October 2018, she was diagnosed as having early onset Alzheimer’s. This was not disclosed to

Officer Roberts either then or at any time before he issued the notices on 20 November 2019, even though he had been told that the records which had been disclosed to him by the company were not necessarily complete.

Officer Roberts' reasons to suspect

(15) Officer Roberts' evidence was that the main reason to suspect arose from the fact that not enough cash was being taken out of the company bank account or being paid directly by bank transfers to pay staff wages and expenses. The shortfall must have been paid in cash (withdrawn from other bank accounts) or by bank transfers from other accounts that are controlled by the appellants or from unknown sources of income which have been introduced into the business to pay the shortfall in wages and expenses to staff.

(16) In essence, the cash being withdrawn by the company either directly or through the directors' loan account did not match the amount of cash that appears to be needed to pay staff as evidenced by the prime records of the business, namely the timesheets and master sheet showing amounts paid to staff wages and subsistence for each pay period.

(17) His analysis of the cash discrepancy showed that amounts identified as potential cash withdrawals were £160,594 of which £128,014 was shown as going through as a debit to the directors' loan account. That account showed that the amount paid out as cash wages was £93,200 yet the amount needed to be paid in cash, as evidenced by the prime records, to staff, was £155,395. This difference of £62,195 needed to be funded from somewhere else. Officer Roberts logic was the cash must have come from the directors to fund the shortfall.

(18) He further stated that a lot of cash wages were paid out; the payroll did not match either the accounts figure for wages or the time/control sheets; the subsistence payments were far higher in the time/control sheets than as recorded in the accounts; the cash withdrawn as noted in the bank statements did not tie in with the amounts debited in the directors' loan account; and the difference did not account for all the amounts paid out additionally as cash wages and subsistence. This suggested to him that there was a systemic issue for which no explanation has been given which gave him serious concerns that the issue would also arise in earlier periods and not just the accounting period under enquiry for the company.

(19) It was his view that sums would have had to have been introduced into the business before 1 October 2015, hence why he has sought information going back to 6 April 2014. The accounts of the company to 30 September 2015 show travel and subsistence as being only £414. As, in his view, the payroll records and time/control sheets for 2016 showed significantly more travel and subsistence being recorded than that which was in the accounts, then it was his conclusion that the travel and subsistence in the 2015 accounts was also likely to have been understated.

(20) It was his evidence too that the income as stated in the appellants tax return for the tax years 2015 to 2016 and 2016 to 2017 was insufficient to cover the shortfall. We were provided with summaries of the appellants tax returns for those periods. They show that in the period 2016 to 2017, Mrs Gilmore received total income of £22,454 and Mr Gilmore received total income of £16,154. For the period 2015 to 2016, Mrs Gilmore received income of £44,724 and Mr Gilmore received income of £39,768.

DISCUSSION

7. In our view the burden of proof is on HMRC to establish that the notices were valid, that they were reasonably required for the purposes of checking the appellant's tax position, and

that the Condition A or B has been met. HMRC's view was that the burden of proving that they were reasonably required rests with the appellants. Whilst we disagree (our view is the same as that set out at paragraph 45 in Judge Thomas's decision in *Morris Newton v HMRC* UKFTT 0513 ("*Newton*")) nothing turns on this.

8. Secondly in the Court of Appeal decision in *Alexander Kotton* [2019] EWHC 1237, Lady Justice Simler at paragraph 60 (admittedly in the context of third-party notices) said this:

“Thus, provided there is a genuine and legitimate investigation or enquiry of any kind into the tax position of a taxpayer that is neither irrational nor in bad faith, that is sufficient. The challenge is not to the lawfulness of the investigation but is limited to the rationality of the conclusion that the information/documents are reasonably required for checking the taxpayer's tax”

9. This suggests to us that the reasonably required test is an objective one. We take the same view of the reason to suspect condition (see paragraph 52 of *Newton* in which Judge Thomas records that the qualifying condition of “reasonable grounds to suspect” which was tested in the case of *Kahn v Assets Recovery Agency* [2006] UK SpC 523, “does not involve proof of criminal conduct but a genuine suspicion which is reasonable viewed objectively.....”

10. HMRC refer to the case of *Stephen Price* [2011] UKFTT 624 (TC) ("*Price*") and in particular to [10] of that decision. That paragraph has been cited with approval in other Tribunal cases, most notably by Judge Sinfield in the case of *Andreas Michael* [2015] UKFTT 0577 (TC). At [29] of that decision, he states as follows:

29. We take the same view as the tribunal in *Stephen Price v HMRC* [2011] UKFTT 624 (TC), another case which was not cited to us by the parties. In *Price*, the appellant had submitted that the enquiry could be closed and an estimated assessment made. The tribunal said that while HMRC has the power to issue such assessments:

“HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody's time if HMRC are forced to make assessments without knowledge of the full facts. The statutory scheme is that HMRC are entitled to full disclosure of the relevant facts: this is why they have a right to issue (and seek the issue of) information notices seeking documents and information reasonably required for the purpose of checking a tax return (see Schedule 36 of Finance Act 2008).”

11. Although this decision is not binding on us, we agree with it and gratefully adopt it.

12. HMRC's position is straightforward. In their view, the notices were validly issued and for the reasons given by Officer Roberts, the information sought by the notices is reasonably required to check the appellants' tax positions. They essentially rely on the same evidence to justify that for the three periods in which no enquiry was opened into the appellants' tax returns, Condition B has been met, namely that Officer Roberts had reason to suspect that an amount which ought to have been assessed to tax for those chargeable periods may not have been assessed. For the period under enquiry (tax year ending 5 April 2018) the appellants now accept that a valid enquiry was opened in respect of that year, and thus Condition A was met.

13. The appellants' position is equally straightforward. In their view Officer Roberts was supplied with a very large amounts of information from which it is readily apparent that the

company was perfectly able to satisfy the cash payments to its employees by way of subsistence, expenses and wages, either directly or via the directors' loan accounts, and there is, therefore, no justification for the information sought by the notices which is simply a fishing expedition, and runs contrary, in any event, to HMRC's stated policy as set out in their enquiries manual.

14. In cross examining Officer Roberts, Mr Islam put it to him that it was clear from Officer Roberts' own spreadsheets that the cash discrepancy between the recorded net pay and the withdrawals from the company's bank for those employees, when aggregated, and excluding the appellants, recorded an overpayment to the employees of approximately £6,000. He also put it to Officer Roberts that in that accounting period, the company had made sales of about £2.3 million net of VAT and had trade debtors of over £500,000. That information had been provided to Officer Roberts. He also put to Officer Roberts that the company had £185,000 in its bank account at the end of that accounting period and had made a profit of £365,000. The business was therefore collecting approximately £230,000 per month (plus VAT) and this was ample to provide the cash funds necessary to pay the wages, subsistence and expenses.

15. Officer Roberts was not taken to the source material for these figures, but his position was that even if they were correct, his analysis had shown discrepancies between the cash taken out of the bank accounts, the timesheets, the payroll, and the accounts. And it was these discrepancies which caused him to conclude that additional cash was required to make the cash payments to the employees, and that those must have come from an undisclosed source of income from which the appellants' benefited.

16. In his submissions, Mr Islam repeated what, essentially, he had put to Officer Roberts and which we have set out above. He explained that the timesheets, even if they were prime records, were incomplete and contained numerous errors because they had been completed by Mrs Barbara Gilmore who was suffering from late onset dementia, but that onset was not known to family members at the time she was completing those timesheets. The company, knowing of that subsequently, had not relied on the timesheets when completing the accounts, in the knowledge that if an investigation had been carried out by HMRC, they would challenge the veracity of those timesheets. In Mr Islam's submission, a very large quantity of primary records used in the preparation of the financial statements such as sales invoices, purchase and expense invoices, trade debtor ledgers, balance sheet reconciliations, computerised payroll records and company bank statements were given to Officer Roberts, yet it was only once Officer Roberts had been given the timesheets that he found the discrepancies. HMRC have made out no case that money had been introduced by the appellants into the business. There is no evidence of any dishonesty by the appellants and no such allegations have been put to them. The appropriate way in which this information should be sought is by the seeking of information from the company and not from the appellants. HMRC have adopted the wrong approach by issuing the notices. The case of *Kevin Betts* [2013] UKFTT 430 supports his submission that contrary to Officer Roberts having reason to suspect prior to the issue of the notices, in fact he had no reason to suspect and it was in order to provide that reason that he issued the notices. This was similar to the position is identified at paragraph 22 of that case, where it appeared to be the wrong way round to seek the documents in order to satisfy Condition B. It was inconceivable that Mrs Gilmore, given her health issue, would have been receiving money from some undisclosed source.

17. We remind ourselves that the role of this Tribunal is not to come to a conclusion as to whether or not there may have been a shortfall in the income declared by the appellants. Although that might be the subject of a further hearing should HMRC assess the appellants for

any such undeclared income. Our role is to consider whether the notices were reasonably required and whether Officer Roberts had reason to suspect.

18. As we have mentioned above, in our view both are objective tests. We ask ourselves whether the objectively reasonable officer in Officer Roberts' position would have come to the same conclusion that the information was reasonably required. In our view that objectively reasonable officer would have come to the same conclusion.

19. It is clear from the evidence that we have seen both documentary and oral that Officer Roberts undertook a detailed and rigorous analysis of the information with which he was supplied by the appellants and their agent. This ran to a spreadsheet of 105 pages. Whilst we accept that the appellants have criticised that spreadsheet, there is no doubt that they are cogent evidence that Officer Roberts had ample justification that there were discrepancies between the accounts, the cash payments from the company's bank account either directly or via the directors' loan accounts, the payroll, and the timesheets. Officer Roberts came to a rational conclusion on the evidence that there was a shortfall of £62,195. When it was put to him that this was not the case and that the net pay and cash resulted in the overpayment of £6,000 to the employees, Officer Roberts asserted that even if that was the case, it still did not explain why there were discrepancies between the cash taken out of the bank and the accounts, the accounts and the payroll, the payroll and the timesheets, and the accounts and the timesheets.

20. In our view these discrepancies do justify Officer Roberts reaching the conclusion that additional cash might have been paid by the appellants.

21. Officer Roberts came to the conclusion that this additional money might have come from an undisclosed source, and thus justified his reason to suspect, on the basis of the financial information set out in the appellants' tax returns for the tax years which covered the company's accounting period ending 30 September 2016. In his view, that financial information showed that the appellants would not have been able to pay the additional cash to the employees. We agree that this is a rational and reasonable conclusion for him to reach. In rough numbers, in those two tax years, the appellants declared income of £120,000. So roughly pro rating, in the 12-month period ending 30 September 2016, their income would have been £60,000. This would clearly be insufficient to make cash payments of, on Officer Roberts' view, £62,195. In our view this gives a reasonable ground to suspect that the appellants may have under declared income. We also believe that it is evidence that the information sought by the notices is reasonably required to check the appellants' respective tax positions.

22. We do not agree that this is the wrong way round, and that Officer Roberts is seeking the information in order to satisfy condition B. The situation in *Betts* was that the relevant HMRC officer had replied yes when asked if he needed the information in order to satisfy condition B. That is not the case here. Officer Roberts has made no such admission and indeed throughout his evidence has made clear that it is the discrepancies described above, and the paucity of income declared by the appellants in their tax returns, that is the basis for his reason to suspect. He is not seeking the information in order to assist him to reach that conclusion. Furthermore, it seems to us that Officer Roberts has fully investigated the affairs of the company and has received a very great deal of information about it. Yet notwithstanding that, there are still discrepancies, and given these, and the information from the appellants' tax returns, we think it is appropriate for the further information requested in the notices to be sought from the appellants rather than through a further investigation into the affairs of the company.

23. Drawing these strands together. The discrepancies between the accounts, bank accounts, timesheets and payroll justified Officer Roberts' conclusions which we have set out at [6(7)] above, which are, essentially, that there was a shortfall in the cash paid to employees for wages and subsistence; he undertook a detailed review of the company's position and those conclusions are rational and reasonable; it is clear that both wages and subsistence payments were made in cash; it is a reasonable supposition that the additional cash required was supplied by the appellants; it is also reasonable for him to have concluded that on the basis of their declared income, the appellants would not have been able to have provided that additional cash; Officer Roberts did not receive the letter sent by the agent to him dated 15 January 2020, nor its attachments, until shortly before the postponed hearing in March 2021; he had not received them on the date on which he issued the notices; nor was he aware, on that date, of Mrs Barbara Gilmore's late onset dementia and the impact that had had on her ability to complete accurate timesheets for the year under enquiry; the discrepancies mentioned above still existed, in large part notwithstanding the information regarding cash and net pay provided by the agent and his assertion that the company had adequate resources from which to pay the wages subsistence and expenses, in cash, to the employees; Officer Roberts has come to a rational conclusion that the information sought by the notices was reasonably required to check the appellants' respective tax positions; he also has objectively reasonable grounds to suspect that the appellants have received income which has not been assessed to tax but which should have been. For the tax year 2017-2018, HMRC have satisfied Condition A. For the three earlier years they have satisfied Condition B. In all years the information sought by the notices is reasonably required to check the appellants' tax position.

24. As is set out at [10-11] above HMRC are entitled to know the full facts about a person's tax position. The information and documentation sought by the notices will assist Officer Roberts in this. Provision of that information and documentation is not unduly onerous and is, in our view proportionate.

25. We therefore dismiss this appeal and direct that the appellant shall provide the information and documentation set out in the notices to HMRC within three months from the date of release of this decision.

NIGEL POPPLEWELL
TRIBUNAL JUDGE
Release date: 01 APRIL 2022

APPENDIX

The relevant parts of Schedule 36 are set out below.

“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 produce a document,

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

(2) In this Schedule, "taxpayer notice" means a notice under this paragraph.....

6(1) In this Schedule, "information notice" means a notice under paragraph 1, 2, 5 or 5.

(2) An information notice may specify or describe the information or documents to be provided or produced.....

8(1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Commissioners.....

18 An information notice only requires a person to produce a document if it is in the person's possession or power.....

21(1) Where a person has made a tax return in respect of a chargeable period under section 8 ... of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period.....

(3) Sub-paragraph [] (1) ... do[es] not apply where, or to the extent that, any of conditions A to D is met.....

(4) Condition A is that a notice of enquiry has been given in respect of –

- (a) the return.....

(6) Condition B is that an officer of Revenue and Customs has reason to suspect that, as regards the person,

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

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.

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- (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
 - (c) set aside the information notice or such a requirement.
- (4) Where the tribunal confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement—
- (a) within such period as is specified by the tribunal, or
 - (b) if the tribunal does not specify a period, within such period as is 10 reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.
- (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.
- (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.....

58 In this Schedule—

“checking” includes carrying out an investigation or enquiry of any kind,

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs, “document” includes a part of a document (except where the context otherwise requires),

“HMRC” means Her Majesty's Revenue and Customs,

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.....

61 In this Schedule "chargeable period" means—

- (a) in relation to income tax or capital gains tax, a tax year, and
- (b) in relation to corporation tax, an accounting period.

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.

(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 subparagraph (1) has expired.....

64(1) In this Schedule, except as otherwise provided, "tax position", in relation to a person, means the person's position as regards any tax, including the person's position as regards—

(a) past, present and future liability to pay any tax.....”