Neutral Citation: [2025] UKFTT 00116 (TC)

Case Number: TC09424

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2024/02809/V

Keywords: Schedule 36 information notice; disguised remuneration; taxpayer notice or third party notice; reasonably required; information notice varied

Heard on: 28 January 2025
Judgment date: 3 February 2025

Before

TRIBUNAL JUDGE KEITH GORDON
MR MICHAEL BELL

Between

MR BINOY JOSEPH

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Joseph represented himself

For the Respondents: Asif Razzak, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The form of the hearing was V (video) and was attended by the Appellant, Mr Razzak, Ms Martin (HMRC's witness) and several other HMRC officers who observed the proceedings. A face to face hearing was not held because it was considered a more efficient use of the Tribunal's and the parties' resources for an online hearing to take place and was likely to reduce any delay in hearing the case. The documents to which we were referred are a 307-page bundle prepared by HMRC (containing the documents and key authorities) and a 13-page skeleton argument prepared by Mr Razzak.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

THE OUTCOME

3. The information notice issued to Mr Joseph on 6 November 2023 is upheld but varied. Mr Joseph is required to provide HMRC with the information and documents set out in Appendix 2 to this decision by 45 days from the date that this decision is sent to Mr Joseph.

OVERVIEW OF THE CASE

4. The case concerns the tax year 6 April 2020 to 5 April 2021.

5. HMRC have issued the Appellant with an information notice which seeks information and documents which relate to the Appellant's employment during that year.

6. The Tribunal was not told why HMRC's focus is limited to the year ended 5 April 2021.

7. The Appellant has not provided the information sought arguing, in summary, that the information sought should be requested from his employer instead. The Appellant's further grounds of appeal are set out below.

THE EVIDENCE BEFORE THE TRIBUNAL

8. The Tribunal heard evidence from HMRC Officer, Ms Kirsteen Martin. The Appellant chose not to cross examine her.

9. The Tribunal also heard evidence from the Appellant. He was cross-examined by Mr Razzak.

10. The Tribunal accepted the evidence of both witnesses as to the facts. Where a witness expressed an opinion, the Tribunal has reached its own independent view.

THE TRIBUNAL'S FINDING OF FACTS

11. During the year, the Appellant was employed by a company called Alpha Republic Ltd (ARL) and continued to be employed by them beyond 5 April 2021.

12. HMRC believe that ARL is a promoter of an avoidance scheme in relation to some of their employees (the participating employees) and they have published details identifying ARL and setting out their understanding as to how the scheme operates. Essentially, HMRC understand that the scheme operates by splitting payments due to their employees into two components: (1) a salary equivalent to the National Minimum Wage (NMW) and (2) a component referred to as a "commission to be paid under the Commission Plan" as referred to in the employment contracts of the participating employees.

13. PAYE and National Insurance Contributions deductions are made as appropriate in relation to the NMW element but the second component is made without such deductions.

14. HMRC exhibited a screenshot from ARL's PAYE records which purported to relate to the Appellant (it stated his name and, as confirmed by the Appellant, his National Insurance Number). That showed earnings in the year to 5 April 2021 broadly in line with what a worker engaged on the National Minimum Wage might expect to earn over a year.

15. Although HMRC know that the Appellant was an employee in the year, they do not know whether he received payments in relation to his employment from ARL over and above the payments reported to HMRC as referred to in the previous paragraph. Similarly, HMRC do not know (assuming that such payments were received) whether they were made in the form of a loan (i.e. so that the payer was entitled to seek repayment of the sums advanced) or in a form which gave the recipient unconditional rights to retain the sums paid for his own use.

16. HMRC gave no indication that they had been sent a P11D in respect of the Appellant identifying any beneficial loans in relation to the year ended 5 April 2021, although the Tribunal recognises that that does not necessarily mean that no loan was made (or whether any loan made gave rise to a taxable benefit-in-kind). The Tribunal makes no finding in relation to the existence or otherwise of a P11D.

17. As Mr Razzak summarised the position, at the present stage, HMRC are unable to say whether there is additional tax to pay in relation to the Appellant's employment with ARL.

18. On 6 November 2023, HMRC issued the Appellant with a notice under paragraph 1 of Schedule 36 to the Finance Act 2008 as they wish to ascertain whether, in the course of the year ended 5 April 2021, the Appellant has in fact received sums in relation to his employment with ARL which have not borne the full amount of tax (and National Insurance Contributions) due in relation to them.

19. The Appellant has not been required to (and did not) submit an income tax return for the year ended 5 April 2021.

THE LEGISLATIVE SCHEME

20. The information notice was issued under paragraph 1 of Schedule 36 to the Finance Act 2008 (Schedule 36) which reads 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 produce a document,
>
> if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position or for the purpose of collecting a tax debt of the taxpayer.
>
> **1(2)** In this Schedule, **"taxpayer notice"** means a notice under this paragraph.

21. There is no statutory definition of "reasonably required".

22. In paragraph 58 of Schedule 36, "checking" is defined as "includes carrying out an investigation or enquiry of any kind".

23. Paragraph 64 of Schedule 36 considers what is meant by "tax position" and reads as follows:

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,

(b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax, and

(c) claims, elections, applications and notices that have been or may be made or given in connection with the person's liability to pay any tax,

and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly.

64(2) References in this Schedule to a person's tax position include, where appropriate, a reference to the person's position as regards any deductions or repayments of tax, or of sums representing tax, that the person is required to make–

(a) under PAYE regulations,

(b) under Chapter 3 of Part 3 of FA 2004 or regulations made under that Chapter (construction industry scheme), or

(c) by or under any other provision of the Taxes Acts.

64(2A) References in this Schedule to a person's tax position also include, where appropriate, a reference to the person's position as regards the withholding by the person of another person's PAYE income (as defined in section 683 of ITEPA 2003).

64(3) References in this Schedule to the tax position of a person include the tax position of–

(a) a company that has ceased to exist, and

(b) an individual who has died.

64(4) References in this Schedule to a person's tax position are to the person's tax position at any time or in relation to any period, unless otherwise stated.

24. Paragraph 63(1)(a) ensures that income tax is a tax for the purposes of Schedule 36.

THE APPELLANT'S GROUNDS OF APPEAL

25. The Appellant's grounds of appeal (as set out in his notice of appeal to the Tribunal and expanded upon in his submissions at the hearing) may be broadly summarised as follows:

(1) The suggestion that ARL has been involved with tax avoidance does not appear to have been accepted by ARL. It has not been independently verified.

(2) HMRC's request is speculative in the hope that something might crop up.

(3) HMRC's suspicions about any tax avoidance being conducted by ARL is not a sufficient basis for asking the Appellant for information.

(4) ARL has been advised by leading tax counsel that its arrangements are compliant with the law.

(5) If HMRC are accusing the Appellant of being dishonest, they are asked to provide their "reasons to suspect".

(6) There is a contradiction between HMRC saying that they do not need to disclose their full reasons for requesting information and/or documents and that HMRC must show that the information and/or documents is/are reasonably required.

(7) A DOTAS listing of ARL is not a valid suspicion.

(8) If "most" avoidance schemes do not work, as stated by HMRC, inevitably there must be some that do.

26. In his oral arguments to the Tribunal, the Appellant also made the point that, as the documents and information sought relate to his employment with ARL, HMRC should be seeking it from ARL and not from him. He also argued that his earnings are a personal matter and not the valid subject of an HMRC enquiry.

PRELIMINARY ISSUE

27. The Appellant appealed against the information notice on 23 December 2023. HMRC accepted that appeal as a valid appeal.

28. On 18 January 2024, HMRC offered the Appellant an internal review in accordance with section 49C of the Taxes Management Act 1970 (TMA).

29. Although there was some further correspondence between the parties in the course of February 2024, the Appellant did not formally accept that offer until 1 March 2024. This was 13 days outside the acceptance period as defined in section 49C. However, HMRC proceeded on the basis that the offer of internal review was validly accepted.

30. Strictly, however, section 49H(3) provides that the appeal may proceed only if the Tribunal gives permission.

31. At the hearing, HMRC made it clear that they did not oppose the case proceeding. In the circumstances (and bearing in mind and applying the three-stage approach set out in *Martland v HMRC* [2018] UKUT 178 (TCC)), the Tribunal agreed that it was appropriate for the Appellant to be permitted to proceed with the appeal. Permission was duly given during the hearing.

THE BURDEN OF PROOF

32. Mr Razzak accepted that HMRC have the burden of proof to show that the information notice was lawfully issued and that the information and documents sought are reasonably required. The Tribunal noted that this concession is consistent with the position now generally taken by this Tribunal and as explained in *Cliftonville Consultancy Ltd v HMRC* [2018] UKFTT 231 (TC). Furthermore, the Tribunal considers that, for the reasons set out in *Cliftonville*, HMRC do bear the burden of proof in these matters.

DISCUSSION

33. The Tribunal understood the eight grounds identified in paragraph above to be different articulations of the same essential point, being that the information notice issued to the Appellant is invalid as it is too speculative, in particular the unproven assertion that ARL has participated in an avoidance arrangement.

34. The Tribunal did not accept these arguments for the following reasons.

(1) The statutory scheme in Schedule 36 (in particular, the wording of paragraphs 58 and 64) makes it clear that Parliament has granted HMRC broad powers to check a taxpayer's tax position. And, as a result of paragraph 63, that includes an individual's income tax position.

(2) HMRC's powers are not limited to cases of tax avoidance (suspected or otherwise). Indeed, they are not limited to cases where HMRC suspect an under-assessment of tax.

(3) The Court of Appeal made clear in *R (oao JJ Management LLP and others) v HMRC* [2020] EWCA Civ 784 at [56] that a check does not need to be conducted within the framework of an enquiry into a tax return under section 9A of the Taxes Management Act 1970. Indeed, the Appellant in this case has not submitted a tax return for the year ended 5 April 2021 (and he has not been required to) and therefore it would not be possible for any statutory enquiry to be conducted into the Appellant's affairs for that year.

(4) Although an investigation outside the statutory enquiry framework is not subject to any statutory oversight (subject to any constraints conferred by the very broad powers given to HMRC under the Commissioners for Revenue & Customs Act 2005), this works both ways – a taxpayer has no specific statutory rights under a non-statutory enquiry but neither do HMRC have any specific statutory powers. As the Court of Appeal also noted in *JJ Management* at [54]:

> "The voluntary nature of the exercise means that the taxpayer can (at any time) simply refuse to cooperate or to continue cooperating and can thereby force HMRC to open a section 9A enquiry if [available to HMRC] or issue a formal information notice pursuant to schedule 36, with the attendant safeguards."

(5) The Appellant did not comply with HMRC's informal request for information as he was entitled to do. HMRC responded by issuing a formal information notice, as they were entitled to do. That then brings in what the Court of Appeal called "the attendant safeguards" of Schedule 36. Accordingly, the Appellant has chosen to appeal against the information notice, as he is entitled to. The lawfulness of HMRC's request is therefore to be assessed by reference to those safeguards in Schedule 36.

(6) The key safeguard is that information or documentation sought must be reasonably required by the officer for the purpose of checking the taxpayer's tax position (paragraph 1). (This is not a case where there is a tax debt.)

(7) Different compositions of the Tribunal have addressed the question as to the extent to which HMRC may embark upon "fishing expeditions" or conduct speculative enquiries. However, those words are inevitably imprecise and the use of those phrases can therefore muddy the waters rather than clarify matters, particularly as they end up being a gloss on the statutory words themselves. We consider that a clear statement of the approach that the Tribunal is required to take in a case such as the present is what Judge Bowler said in *One Call Insurance Services Ltd v HMRC* [2022] UKFTT 184 (TC) at [70]:

> "I consider that HMRC must identify a tax issue to which the information sought relates and I must be satisfied that HMRC's investigation is genuine and legitimate and not in bad faith. Beyond that it is not for me to reach any conclusion regarding the tax issues or issues identified by HMRC; and, in particular, it is not necessary for it to be shown that a liability to tax will arise on conclusion of the investigation as a valid investigation may lead to the conclusion there is no liability."

(8) As stated more recently by Judge Poon in *Turcan v HMRC* [2024] UKFTT 869 (TC) at [144]:

"a proper consideration of the 'reasonably required' criterion cannot be undertaken 'in a vacuum'".

(9) That proper consideration has to be based on the context of any particular case.

(10) In the present case, the Appellant was an employee of ARL in the year ended 5 April 2021. HMRC believe that ARL paid some of its employees in a way that meant that some earnings were not taxed. HMRC do not know whether the Appellant is one such employee. However, the level of known earnings (i.e. those of which HMRC are aware and on which tax has been deducted) is consistent with the possibility that there are further earnings on which tax has not been deducted.

(11) For the avoidance of doubt, the Tribunal is not making any assumption as to whether there are such further earnings and, if so, whether they have been taxed in accordance with the law. In addition, the Tribunal notes HMRC's clear statement to the Appellant at the hearing that they are not making accusations of dishonesty against the Appellant. However, the Tribunal has no hesitation in concluding that the Appellant's earnings is something that, in principle, HMRC are entitled to check.

(12) We emphasise that this does not give HMRC a *carte blanche* to ask whatever questions they want of taxpayers. The words "reasonably required", which is context-specific, provide the key safeguard for taxpayers but these also have to be read in the light of the wider statutory context.

35. In relation to the argument that the Appellant's earnings are a personal matter, the Appellant's undoubted rights to privacy are not absolute. In particular, HMRC (whose officers are bound by statute to keep taxpayer information confidential) must be permitted to conduct investigations to ensure that taxpayers are paying the right amount of tax. Again, any limits on HMRC's investigation rights here are provided by the words "reasonably required".

36. Although the Tribunal concluded that HMRC are entitled to investigate the Appellant's earnings, there were other issues that the Tribunal has had to consider.

37. First, there is the point raised by the Appellant himself: the context here is employment income which, if taxable, ought to have been subject to PAYE. In other words, in the first instance, it is ARL's tax affairs (their possible failure to apply the PAYE rules properly) rather than the Appellant's tax affairs. Indeed, paragraph 64(2) (cited above) makes it clear that a person's tax position includes that person's obligations under the PAYE rules. If that is the focus of HMRC's investigation then, on the basis of the Appellant's arguments, a notice to employees such as the Appellant should be a third party notice which is issued under paragraph 2 of Schedule 36 and governed by a separate set of safeguards. The notice in this case is a taxpayer notice under paragraph 1 and, if it should have been issued under the paragraph 2 provisions, the Tribunal would allow the appeal.

38. Indeed, whilst section 13 of ITEPA provides that an employee is "liable" for income tax on earnings, section 684(7) provides that the PAYE Regulations "have effect despite anything in the Income Tax Acts". Under the PAYE Regulations (SI 2003/2682), it is the employer and not the employee who is primarily obliged to account for that tax and to whom HMRC should initially turn to collect any underpaid tax.

39. HMRC have submitted that, if it transpires that the Appellant received earnings on which ARL should have deducted, but failed to deduct, income tax under PAYE, there are provisions (notably under regulations 72 and 81 of the PAYE Regulations) which permit HMRC to transfer liability for the income tax back from the employer to the employee. However, for the reasons that follow, in the circumstances of this case, the Tribunal does not

consider those provisions to be sufficient to justify the issue of a taxpayer notice to the Appellant rather than a third party notice:

(1) The essential reason for the Tribunal's conclusion is that HMRC's powers to transfer liability under the PAYE regulations are tightly circumscribed.

(2) Regulation 72 permits HMRC to transfer liability for the PAYE from the employer to the employee only if either Condition A or Condition B is satisfied:

(3) Condition A is that:

> "the employer satisfies [HMRC]–
>
> (a) that the employer took reasonable care to comply with these Regulations, and
>
> (b) that the failure to deduct the excess was due to an error made in good faith."

(4) Condition B is that:

> "[HMRC] are of the opinion that the employee has received relevant payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments."

(5) The Tribunal was given no evidence to suggest that either of these conditions might be relevant.

(6) The thrust of HMRC's case is that ARL has taken steps to avoid its PAYE obligations. If HMRC are right in that regard, then that would be inconsistent with Condition A applying.

(7) Condition B is tantamount to an allegation of dishonesty on the part of the Appellant. Not only have HMRC disavowed any such allegation but the Tribunal has been provided with no evidence to suggest that this is even a remote possibility.

(8) As a result, the Tribunal has reached its decision on the basis that regulation 72 will not apply.

(9) So far as regulation 81 is concerned, that applies in a case where HMRC have already issued a determination against the employer but that has not been paid within 30 days of becoming final and conclusive. However, again, that is subject to two conditions, A and B.

(10) Condition A is materially identical to regulation 72's Condition B. For the same reasons, the Tribunal considers that it is of no assistance to HMRC in the present case.

(11) Condition B relates to a particular type of payment (notional payments) that can be made to employees. There is no evidence in the present case to suggest that the Appellant has received such payments and therefore the Tribunal has concluded that there is currently no possibility of HMRC invoking Condition B.

(12) As a result, the Tribunal has reached its decision on the basis that regulation 81 will not apply.

(13) Although not referred to by HMRC, the Tribunal is also aware that the Court of Appeal in *Hoey v HMRC* [2022] EWCA Civ 656 concluded that HMRC have powers outside the PAYE Regulations (in ITEPA, section 684(7A)(b)) to transfer liability from an employer to an employee. However, the Tribunal reads the Court of Appeal's decision as saying that the use of this power should be limited to exceptional cases where a "retrospective exercise of the power" might be considered to be fair. The

Tribunal had no evidence to suggest that the present case falls within such an exceptional case.

(14) Nevertheless, despite rejecting HMRC's arguments in this regard, the Tribunal still considers that the notice was properly issued under paragraph 1 of Schedule 36 rather than paragraph 2. The Tribunal is satisfied that HMRC are checking the Appellant's income tax affairs. The fact that his tax affairs overlap with those of ARL is unsurprising: indeed most forms of taxable receipt arise in the course of a bilateral transaction and therefore can potentially be relevant to the tax affairs of more than one person. We agree with what Judge Baldwin said in *Foreign National v HMRC* [2023] UKFTT 475 (TC) at [100]:

> "Inevitably, whenever HMRC ask for information from a taxpayer that relates to their dealings with another person, they will learn something about that other person. Provided the information HMRC seek is "reasonably required" to check the tax position of the taxpayer in question, the fact that the information will also tell HMRC something about someone else does not mean that they cannot seek that information from the taxpayer. [The officer] has satisfied us that he needs this information to resolve uncertainties in his understanding of [the Appellant's] tax position."

(15) The Tribunal accepts that, even if it transpires that more tax should have been accounted for, it currently appears that it would be ARL and not the Appellant who is liable to pay that tax. However, the Tribunal is of the view that the matter still relates to the Appellant's tax affairs and therefore it was right for the notice issued to the Appellant to be under paragraph 1 and not paragraph 2.

40. Secondly, there are the statutory time limits for making assessments on taxpayers. These time limits also apply to employers. Broadly speaking, these time limits mean that any assessment (if made on the Appellant) or determination (if made on ARL) must be made within four years of the end of the tax year to which it relates (TMA, section 34 and regulation 80(5) of the PAYE Regulations): in the current case, that four-year period will end on 5 April 2025. Although that four-year period can be extended in certain cases, in view of the lack of sufficient evidence before the Tribunal to suggest that an extended time limit *might* be applicable, the Tribunal has proceeded on the assumption that the relevant time limit in this case is going to be 5 April 2025. In this regard, the Tribunal noted what was said in the case of *Hegarty v HMRC* [2018] UKFTT 774 (TC) at [154] and [155]:

> "… We would say that a person's tax position is not being legitimately checked or enquired into if the position is one which cannot be corrected by an enforceable assessment."
>
> "In the alternative we would construe the phrase "reasonably required" in paragraph 1 as importing the same test. It cannot be reasonable to make a futile enquiry."

41. However, the Tribunal does not consider that HMRC's investigations are inevitably futile in this case. This case was heard at the end of January 2025 and, for reasons we explain further below, our decision is that the Appellant should provide some information to HMRC by the middle of March. We consider that HMRC should have sufficient information to allow them to reach a decision about the Appellant's tax position in the year ended 5 April 2021 by 5 April 2025. At this stage we are not saying whether there is likely to be further tax to pay and, if so, who should be liable for that tax. If HMRC are unable to make a decision by 5 April 2025 then they will have to ascertain, from information not before this Tribunal. whether the circumstances justify a later assessment or determination.

TERMS OF THE NOTICE

42. Although we uphold HMRC's right to ask questions in relation to the Appellant's earnings from ARL in the year ended 5 April 2021, we did consider it appropriate to amend the notice. The terms of the notice as issued are in Appendix 1 of this decision notice. The notice as varied is set out Appendix 2.

43. Our reasons for the amendments are as follows.

44. There were two overriding concerns about the information notice as issued.

45. First that it requested more information than could be reasonably required for the purposes of checking the Appellant's tax position. Secondly, the precise boundary between what was wanted by the notice and what was not was unclear. The Tribunal agrees with what was said in *R D Utilities Ltd v HMRC* [2014] UKFTT 303 (TC) at [10] when Judge McKenna said:

> "The Tribunal takes the view that Information Notices should be expressed in clear terms and that it should be a straightforward matter for both parties to know whether an Information Notice has been complied with. …"

46. Sometimes these different concerns overlapped in this case.

47. For example, the definition of "employment arrangements" which underpinned much of the notice stated that it *included* "any plans and preparations made with someone so that something would happen or be possible". If taken literally, this goes far beyond the arrangements by which the Appellant would be paid for his work and, for example, would cover arrangements (if sent by e-mail) to meet a colleague for coffee or lunch. HMRC's legitimate investigation concerns how much the Appellant received from ARL and the tax (if any) deducted from those amounts received. The further that a request departs from that core investigation, the harder it will be for HMRC to show that the information or document is reasonably required.

48. Thus, the Tribunal has broadly upheld Item 2 of the information notice. The only amendments are to make it clear that, in accordance with the employment income rules, the enquiry is limited to receipts *in* the year under investigation rather than *for* that year.

49. Similarly, the Tribunal has broadly upheld Item 4 of the information notice. However, as accepted by Mr Razzak at the hearing, it has been amended so as to allow the Appellant to redact details of his expenditure. In this regard, the Tribunal agrees with what the Special Commissioner (Colin Bishopp) said in *Taylor v Bratherton (HMIT)* (2004) Sp C 448 at [7]:

> "the taxpayer should not be required to divulge details of his personal expenditure if that could be avoided"

50. The Appellant similarly expressed concern that an unredacted bank statement would show payments he has made but which he considers to be of a private nature.

51. We consider that it will rarely be appropriate for HMRC to require a taxpayer to show the outgoings from a personal bank account and, particularly, in a case such as this where HMRC's investigation is limited to identifying whether or not the taxpayer has received income on which insufficient tax has been paid.

52. To make the request clearer, we have inserted the word "all" into this item so that the Appellant knows that he must disclose all bank statements for all of his bank accounts covering the year ended 5 April 2021 and not merely those statements which show income of which HMRC are already aware.

53. We considered that the information listed in Item 1 was not reasonably required. What is important is how much the Appellant received (and whether it was taxed). That information can be identified from the information to be provided under Items 2 and 4.

54. It is not relevant for the purposes of checking his position who, for example, told the Appellant about the employment arrangements (even if that term is narrowly defined to refer to the arrangements concerning the Appellant's pay). Similarly, the amount at which the Appellant might have had his services charged out at is not relevant. The Tribunal agrees with what was said by Judge Redston and Mr Toby Simon in *Duncan v HMRC* [2018] UKFTT 296 (TC) at [98] (in the context of rental income and extraneous information sought by HMRC):

> "The relevant test is whether the Item is "reasonably required…for the purpose of checking the taxpayer's tax position". In other words, HMRC has the power to obtain information to allow it to assess the tax which is due. In the context of a property business, that involves information about the rent actually charged. Numerous factors determine the rental income which could be charged for a property, of which the property type is only one. We do not consider that information about whether the property is a flat or a house will give HMRC any reliable indication as to whether the rental income disclosed is credible."

55. In the same way, the tax due on an individual's employment income turns on the amount received by the individual which itself is the result of numerous factors. How much the Appellant could have earned and how much intermediaries in the contractual chain made from his services are not reasonably required.

56. During the hearing, Mr Razzak initially suggested that the information and documents in Item 1 were reasonably required because they would establish what the actual earnings were, as ARL's PAYE records relate only to minimum wage earnings and HMRC need to show the Appellant's full earnings (i.e. whether he received additional earnings). However, Mr Razzak did accept that that information should be clear from compliance with Item 2.

57. We therefore removed Item 1 from the notice.

58. In relation to Item 3, Mr Razzak suggested that the information and documents were required because they would identify parties' roles and responsibilities so that HMRC could ascertain what might be a reasonable level income for the Appellant. However, for the same reasons as set out in relation to Item 1, we considered that that is not reasonably required – what is reasonably required is what the Appellant actually received.

59. Mr Razzak also said that the information and documents requested would allow HMRC to identify other people in the contractual chain and where any tax liability "sits". However, the limited evidence in this case suggests that it is ARL, if anyone, that has failed to apply PAYE correctly on its employees' earnings and that it is ARL whose details have been published (see paragraph above). The Tribunal does not believe that HMRC would have published ARL's details without at least a basic understanding of the contractual chains. We considered that the potential onerousness of asking the Appellant to look back to April 2020 and itemise each assignment (location, contracting parties etc) outweighed the potential benefits to HMRC.

60. We therefore removed Item 3 from the notice.

61. We have largely upheld the requests in Items 5 to 7 but modified the wording to make it clear that they relate only to the terms, income and any other payments received and confirmatory documents relating to the Appellant's employment (or employments) with ARL. Mr Razzak said that he was content with those modifications.

62. In relation to Item 8, we have similarly upheld the request but narrowed its scope so that it expressly relates only to the pay that the Appellant would receive from his employment (or employments) with ARL.

OTHER MATTERS

63. The Tribunal makes no findings as to what of the remaining information is in the Appellant's possession or power (as provided for in paragraph 18 of Schedule 36).

TIME FOR COMPLIANCE

64. For the above reasons, we have concluded that the Appellant is required to provide information to HMRC although it is less extensive than the original information notice issued to him.

65. The Tribunal has also considered the period during which the Appellant is to provide that information if he is not to become liable for a penalty (or penalties) for non-compliance.

66. The original notice gave the Appellant 45 days to comply. The Appellant's appeal did not expressly challenge this 45-day period.

67. At the hearing, Mr Razzak asked the Tribunal (if we were to decide not to set aside the information notice) to reduce the period for compliance so as to give HMRC enough time to make an assessment or determination by 5 April 2025.

68. Under paragraph 32(4)(a) of Schedule 36, the Tribunal may specify the period within which the Appellant must comply with the notice.

69. The Tribunal noted HMRC's request and is unwilling to leave HMRC without a remedy if it transpires that more tax is payable either by the Appellant or by ARL (or, potentially, by another entity). Furthermore, the Tribunal considers that the more limited notice should be capable of being complied with by the Appellant in a period shorter than 45 days.

70. However, the Tribunal has decided that it would be procedurally unfair to impose on the Appellant a shorter period without giving him an opportunity to make submissions on the point. Furthermore, the fact that the notice is less onerous than the original notice also means that the information to be provided to HMRC will be less onerous for HMRC to process. Although they might have only a couple of weeks in which to make a decision, we do not consider that to be an unrealistic timescale. Furthermore, this decision notice will give HMRC a further 45 days' notice to allow them to prepare for that potential time limit.

71. Accordingly, in accordance with paragraph 32(4)(a) of Schedule 36, the Tribunal specifies that the Appellant must comply with the revised notice (as set out in Appendix 2 of this decision notice) **within 45 days** of the date on which this decision notice is sent to the parties.

Release date: 03rd FEBRUARY 2025

APPENDIX 1 – The information notice as issued to the Appellant on 6 November 2023

Please send us the information and documents shown below relating to your employment arrangements with Alpha Republic Ltd.

The notes on the last page explain some of the terms we use in this schedule, for example, 'employment arrangements', 'end user' and 'intermediary'.

1 For these employment arrangements:

- give us a detailed explanation of what you were told about the employment arrangements – for example, your hourly rate, daily rate, retention rate, take home pay and any loans, credit or other payments
- tell us the name and business address of each person or entity that told you about the employment arrangements
- tell us everything you were told about how much of your earnings you would keep – for example, after tax or other amounts taken off

2 Details of all amounts received relating to these employment arrangements and whether they were taxed or not, for the period 6 April 2020 to 5 April 2021. Please include the dates and the amount you received on that date.

3 For each separate contract or other agreement relating to these employment arrangements in the period 6 April 2020 to 5 April 2021, tell us:

- the names of each of the end users or clients, the addresses of the premises where you worked and the start and end dates for each
- what your roles and responsibilities were
- the names and addresses of each intermediary (sometimes called an 'agency') and the start and end dates for each
- the name and address of your employer (you may know this as your 'umbrella company') – your employer's name should be on your payslip
- the start and finish date for each contract or agreement
- your daily 'charge out' rate to the end user or client
- the name and address of each person, company, trust, partnership or other organisation, that provide you with loans, credit, or any other income as part of the arrangements, that have not been taxed – also tell us the amounts of that income

4 Copies of unredacted bank statements for the period 6 April 2020 to 5 April 2021, that show all the amounts deposited in your account from these employment arrangements.

5 A copy of each separate contract or other agreement you had relating to these employment arrangements in the period 6 April 2020 to 5 April 2021.

6 Copies of all agreements you had relating to loans, other forms of credit, advances of earnings, bonuses, annuities or other amounts (however they are described), for the period 6 April 2020 to 5 April 2021.

7 A copy of the payslip, letter, email or other notification you received, for each amount you received for the period 6 April 2020 to 5 April 2021.

8 Copies of all correspondence that you received from, or that you sent to, any person involved in the operation or facilitation of the employment arrangements. Please include anything sent to or received from your employer, end user or client, and any intermediary.

Notes

Employment arrangements	Includes any plans and preparations made with someone so that something would happen or be possible. This could be anything from agreeing a simple employment contract, to negotiating or buying an employment agreement involving complex steps or processes to decrease the liability to tax on the earnings.
End user	Sometimes described as a 'client'. This is any individual, company or other organisation, that you provide your services to.
Intermediary	Sometimes called an agency company. Includes any individual, company, organisation or other entity which is in any way involved in the provision of your services.
Umbrella company	An umbrella company, or PAYE umbrella, is a company that self-employed contractors can join as an alternative to setting up (and working through) their own limited company. When you join an umbrella, you become their employee. The umbrella acts as an intermediary between you and your recruitment agency (or end client). It deals with administration (like accountancy and taxes) and means you do not have to take on the responsibility of running a company yourself. Your umbrella company also handles payroll. They invoice and get paid for the work you complete. Then they pay you through PAYE, deducting costs like taxes, National Insurance contributions and workplace pension payments.
Charge out rate	The daily, hourly, weekly or other rate charged to the end user or client for your services.
Document	Anything that information of any description is recorded on. This includes records held on paper, computer, magnetic tape, optical disk (CD-ROM or DVD), hard disk, memory stick, flash drive or other recording media.
Correspondence	Includes letters, notes of meetings, notes of phone conversations, e-mails, faxes, and other electronic communications.

APPENDIX 2 – The information notice as varied by the Tribunal

Please send HMRC the information and documents shown below relating to your employment with Alpha Republic Ltd.

The notes below explain some of the terms used.

1 [Removed]

2 For all amounts received in the period 6 April 2020 to 5 April 2021 relating to your employment (or employments) with Alpha Republic Ltd, the dates of receipt, the amount you received on each date and whether they were taxed or not.

3 [Removed]

4 Copies of all your bank statements for the period 6 April 2020 to 5 April 2021 (which may be redacted so as not to show details of payments made from the accounts).

5 A copy of each separate contract or other agreement you had confirming the terms of your employment (or employments) with Alpha Republic Ltd in the period 6 April 2020 to 5 April 2021.

6 Copies of all agreements you had relating to loans, other forms of credit, advances of earnings, bonuses, annuities or other amounts (however they are described) in relation to your employment (or employments) with Alpha Republic Ltd, for the period 6 April 2020 to 5 April 2021.

7 A copy of the payslip, letter, email or other notification you received, for each amount you received in relation to your employment (or employments) with Alpha Republic Ltd for the period 6 April 2020 to 5 April 2021.

8 Copies of all correspondence that you received from, or that you sent to, any person which discussed the method (or methods) by which you would be paid in relation to your employment (or employments) with Alpha Republic Ltd . Please include anything sent to or received from Alpha Republic Ltd, any end user or client, and any intermediary.

Notes

End user	Sometimes described as a ‘client’. This is any individual, company or other organisation, that you provide your services to.
Intermediary	Sometimes called an agency company. Includes any individual, company, organisation or other entity which is in any way involved in the provision of your services.
Correspondence	Includes letters, notes of meetings, notes of phone conversations, e-mails, faxes, and other electronic communications.