



**TC01998**

**Appeal number: TC/2010/06931**

*Income tax – appeals against information notices under Schedule 36 FA 2008 – whether taxpayer’s records were statutory records – held yes in part – appeals against notices to produce statutory records struck out – whether other information reasonably required for purposes of checking taxpayer’s tax position – held yes – appeal dismissed and notice confirmed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PRITI LEE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE GREG SINFIELD  
WILL SILSBY**

**Sitting in public at 35 Bull Street, Birmingham B4 6EQ on 2 April 2012**

**Mrs Lee did not appear and was not represented**

**Ms Lisa Taylor, presenting officer of HM Revenue and Customs, for the Respondents**

## DECISION

### Introduction

1. Mrs Priti Lee (“Mrs Lee”) has appealed to the Tribunal against notices (“the  
5 Information Notices”) requiring her to provide information and documents relating to the tax years 2005/6, 2006/7 and 2007/8 to HM Revenue and Customs (“HMRC”).

2. The appeals had been listed for hearing on 5 December 2011 and 16 January  
2012 but the hearings had been vacated because Mrs Lee had suffered an injury to her  
knee and could not attend. The hearing was re-listed at a time when it was hoped that  
10 Mrs Lee would be well enough to attend but, when the time came, Mrs Lee stated that her knee was still causing her pain and she could not attend in person. The Tribunal made advance arrangements for Mrs Lee to attend by telephone. On the day of the hearing, the clerk to the Tribunal called Mrs Lee who said that she was not feeling well enough to participate in the proceedings by telephone. Mrs Lee asked the  
15 Tribunal to deal with her appeal on the papers. We considered the correspondence from Mrs Lee and the documents provided by HMRC and decided that it was in the interests of justice to proceed with the hearing of the case in Mrs Lee’s absence under rule 33 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

### Background

20 3. HMRC issued tax returns for the three years to 5 April 2008 to Mrs Lee which she submitted as follows:

Year	Date of issue	Due date	Date received	Enquiry window closes
2005/6	25/06/07	31/01/08	01/06/09	31/07/10
2006/7	25/06/07	31/01/08	31/01/08	31/01/09
2007/8	06/04/08	31/10/08 paper 31/01/09	01/06/09	31/07/10

Mrs Lee's tax returns showed income and expenditure as follows:

Year	Description	Turnover	Expenses	Net profit (loss)
2005/6	Income from self-employment - Property	£6,850	£27,570	(£20,720)
2006/7	Income from self-employment – Property	Nil	Nil	Nil

2007/8	Income from self-employment – Sole Trader	£1,000	£15,946	(£14,946)
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4. On 17 March 2010, HMRC opened enquiries into the returns for 2005/6 and 2007/8 (the time limit for opening an enquiry into 2006/7 had expired). HMRC made informal requests for information in relation to all three years by letters to Mrs Lee dated 17 March 2010. In relation to 2005/6 and 2007/8, HMRC asked for certificates of interest for each bank/building society account and a breakdown of self-employment income and expenses. In relation to 2006/7, HMRC's letter stated that they had reason to believe that Mrs Lee had received interest from Abbey National that had not been included in her self-assessment tax return and only asked for certificates of bank/building society interest received. By fax dated 14 April 2010, Mrs Lee replied that she had received an amount of compensation under a court order that had wrongly been treated as taxable. She stated that the interest related to the compensation and was not taxable. Mrs Lee referred to the fact that the matter was before the Tribunal. In fact, that particular appeal to the Tribunal related to a VAT issue but, nevertheless, HMRC agreed to await the outcome of the appeal before taking the request for information further. The VAT appeal was heard in July 2010 and a decision issued on 28 October 2010 ([2010] UKFTT 520 (TC) TC00775).

#### **Schedule 36 Information Notices**

5. As no documents or information had been provided by Mrs Lee, HMRC issued the Information Notices under paragraph 1 of Schedule 36 to the Finance Act 2008 to Mrs Lee on 5 August 2011. Paragraph 1 states that an officer of HMRC may, by notice in writing, require a taxpayer to provide information and produce documents if the information is reasonably required for the purposes of checking the taxpayer's tax position. The information required by the Information Notices was the same as had been sought by the informal requests in March 2010.

6. Paragraph 21(1) of Schedule 36 provides that, where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of the Taxes Management Act 1970, an Information 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. Paragraph 21(3) provides that sub-paragraph (1) does not apply where one of four specified conditions is met. The Information Notices relating to 2005/6 and 2007/8 were made under Condition A, namely that a notice of enquiry had been given in respect of the returns and the enquiry had not been completed. The Information Notice relating to 2006/7 was made under Condition B, namely that an HMRC officer had reason to suspect that an amount that ought to have been assessed to tax for the period may not have been assessed.

7. In three letters, all dated 17 August 2011, Mrs Lee objected to the Information Notices. She stated that compensation and interest on compensation were not subject to tax and that she was owed rebates of tax, together with interest, by HMRC. She further stated that HMRC already had the information they needed. By Notices of Appeal dated 20 August 2011, Mrs Lee appealed to the Tribunal against the

Information Notices. The grounds of appeal were that HMRC had no legal right to review the returns or charge interest to tax as compensation and interest on compensation are not subject to tax. Mrs Lee also asked in her Notice of Appeal and subsequently in a letter to the Tribunal for an order that HMRC pay her rebates of tax and interest thereon.

## Discussion

8. Paragraph 29 of Schedule 36 provides that:

"(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."

The effect of Paragraph 29 is that Mrs Lee has no right of appeal against an Information Notice in so far as it relates to her statutory records.

9. Paragraph 62 of Schedule 36 defines statutory records as follows:

"(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,

subject to the following provisions of this paragraph.

...

(3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired."

10. The effect of Paragraphs 29(2) and 62(3) of Schedule 36 is that information and documents are statutory records if and for as long as Mrs Lee is required by the Taxes Acts to preserve them and Mrs Lee has no right of appeal against an Information Notice in respect of them.

11. Section 12B(1) Taxes Management Act 1970 provides that any person who may be required to make and deliver a tax return must keep all such records as may be required to enable him to make and deliver a correct and complete return. Section 12B(2) of the 1970 Act provides that a taxpayer must preserve the records until:

(a) in the case of a person carrying on a trade, profession or vocation, the fifth anniversary of the 31st January following the end of the year of assessment or the sixth anniversary of the end of the period if not a tax year; and

(b) otherwise, the first anniversary of the 31st January next following the year of assessment.

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12. Where a tax return is required by notice given by HMRC before the periods in [11] above have expired, the period for which records must be preserved is extended by Section 12B(1)(b)(i) of the 1970 Act until the completion of any enquiries into the return. Section 12B(2A) of the 1970 Act provides that where the notice to make the return is given after the times in [11] above, the taxpayer must preserve any records in his possession at that time until the completion of any enquiries into the return.

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13. As the enquiries into the 2005/6 and 2007/8 returns were opened on 17 March 2010 before the enquiry window for both years closed on 31 July 2010, the records relating to interest received by Mrs Lee had to be preserved until the closure of those enquiries. As those enquiries have not been closed, the duty to preserve still exists. We therefore consider that the records relating to 2005/6 and 2007/8 were statutory records when the Information Notices for those years were issued on 5 August 2011. That being the case, Mrs Lee has no right of appeal against the Information Notices for 2005/6 and 2007/8. In any event, the information and documents relating to Mrs Lee's business activities in 2005/6 and 2007/8 would have to be kept until 31 January 2012 and 31 January 2014 respectively under Section 12B(2)(a) of the 1970. Even without the enquiry, those items were statutory records at the time of the Information Notices were issued and Mrs Lee has no right of appeal against them.

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14. As no enquiry was opened by HMRC into the 2006/7 return, the information and documents relating to the interest received in 2006/7 had ceased to be statutory records by the time that the Information Notice for that year was issued in August 2011, Mrs Lee can appeal against that Notice.

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15. In relation to the Information Notice for 2006/7, paragraph 1 of Schedule 36 states that the information can only be required if it is "reasonably required [by HMRC] for the purposes of checking the taxpayer's tax position". Mrs Lee has never disputed that she has received interest and, further, has never disputed HMRC's contention in correspondence that she did not declare such interest on her self-assessment tax returns for the years under consideration. Mrs Lee has never provided HMRC with any details as to the amounts of interest received. Mrs Lee's position, as presented in correspondence and the Notice of Appeal, has always been that no tax is due on the amount paid to her as compensation or the interest derived from it. It seems to us that (without deciding it) her argument that the interest is not subject to tax is misconceived but that is not the subject of this appeal. Ms Taylor for HMRC explained at the hearing that the inspector of taxes, Mr White, had indicated that he would be willing to look at Mrs Lee's claims for rebates of tax on the basis that no tax was properly due but that he first required the information requested in order to consider the matter properly. In our view, it is reasonable in the circumstances of this case for HMRC to require details of such interest. We accordingly confirm the

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Information Notice in relation 2006/7. If we are incorrect in our conclusion that the interest elements of the Information Notices for 2005/6 and 2007/8 cannot be appealed because the documents and information requested comprise statutory records, our reasoning in relation to the 2006/7 Information Notice applies equally to the other two years. The information is reasonably required.

### **Decision**

16. In conclusion, our decision is that the appeal against the Information Notice in respect of 2006/7 is dismissed. We confirm the 2006/7 Notice, which relates to interest only, under Paragraph 32(3) of Schedule 36 and specify, under Paragraph 32(4)(a) of Schedule 36, that Mrs Lee shall comply with the Notice within 30 days of the date of release of this decision.

17. For the reasons given above, we have decided that Mrs Lee has no right of appeal against the Information Notices for 2005/6 and 2007/8 and, accordingly, the appeals in relation to those Notices must be struck out. As we do not have jurisdiction, we cannot confirm the Information Notices under Paragraph 32(3) of Schedule 36 but they stand as issued.

### **Rights of appeal**

18. Paragraph 32(5) of Schedule 36 provides that a decision of the Tribunal on an appeal under Paragraph 29 of Schedule 36 is final. Our decision in relation to the 2006/7 Information Notice cannot, therefore, be appealed to the Upper Tribunal.

19. We found that Mrs Lee had no right of appeal to this Tribunal in relation to the 2005/6 and 2007/8 Information Notices because the information required constituted statutory records. The normal appeal rights apply to our decision to strike out these appeals (see *LS v London Borough of Lambeth* (HB) [2010] UKUT 461 (AAC)).

20. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with the Tribunal's decision to strike out the appeals has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this Decision Notice.

**GREG SINFIELD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 20 April 2012**