



TC02401

Appeal number: TC/2011/09915 & TC/2012/06678

INCOME TAX – self assessment – enquiry into return – application by taxpayer for closure notice – whether reasonable grounds for not issuing closure notice – on facts, enquiry not complete – application refused

INCOME TAX – taxpayer notice under FA 2008 Sch 36 – whether information and documents reasonably necessary for checking his tax position – whether time limit for complying with requirements inadequate – held, information and documents reasonably required – notice varied by substitution of revised time limit – subject to that variation, notice confirmed - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BASHAR NOURI ALKADHI

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN CLARK
HELEN MYERSCOUGH**

Sitting in public at 45 Bedford Square, London WC1B 3DN on 1 October 2012

Stephen Wood of Barnes Roffe LLP, Chartered Accountants, for the Appellant

Peter G Kane, officer of HM Revenue and Customs, for the Respondents

DECISION

1. Mr Alkadhi applies for a direction from the Tribunal requiring the Respondents (“HMRC”) to issue a closure notice to him in respect of the enquiry into his tax return for the year ended 5 April 2008, and appeals against a notice under paragraph 1 of Schedule 36 to the Finance Act 2008 (referred to in this decision as “Sch 36”).

Procedural matters

2. Mr Alkadhi’s application for the closure notice was notified to HM Courts & Tribunals Service (“HMC&TS”) by letter from his accountants, Barnes Roffe, dated 28 November 2011. No Notice of Appeal form was submitted in support of this application. On the same date, Barnes Roffe wrote on his behalf to HMRC to notify his appeal against the Sch 36 notice. In that letter they informed HMRC that they had applied to the Tax Tribunal for a closure notice.

3. At that stage, no notification was given to HMC&TS of Mr Alkadhi’s appeal against the Sch 36 notice. In a letter to Barnes Roffe dated 19 December 2011, HMRC indicated that if the closure notice was not withdrawn, they would be applying for the appeal against the Sch 36 notice and the closure notice application to be heard together.

4. In a letter to Barnes Roffe dated 17 April 2012, HMC&TS indicated that HMRC had requested the closure notice application to be stayed to allow a review of the Sch 36 notice to be completed; in the enclosed copy email, HMRC referred to Barnes Roffe having already contacted HMC&TS in relation to the Sch 36 notice.

5. Barnes Roffe responded on 25 April 2012; they requested that Mr Alkadhi’s closure application should be listed for hearing together with his appeal against the Sch 36 notice. In a later letter to HMC&TS dated 24 May 2012, they referred to Mr Alkadhi’s availability for a hearing.

6. In a letter to Barnes Roffe dated 18 June 2012, HMC&TS replied to their two letters, and explained that the Sch 36 appeal did not appear to have been notified to the Tribunals Service; in order to do so, the grounds of appeal and a copy of the letter from HMRC informing Barnes Roffe of the conclusion of the internal review would be required. In addition, as the 30 day time limit had now passed, Barnes Roffe would also need to provide reasons as to why the appeal had not been submitted to HMC&TS within the time limit.

7. Barnes Roffe replied on 21 June 2012, stating that there had clearly been some confusion. They explained that the appeal against the Sch 36 notice had not been notified to HMC&TS because Barnes Roffe had been under the impression that HMRC had both informed HMC&TS of the appeal and had informed HMC&TS of Barnes Roffe’s desire to have both the appeal and the closure notice application heard together.

8. We would like to emphasise the need to follow the proper procedure in these matters. It is not sufficient, where making an appeal or application to the Tribunal, to notify HMRC, and it is not appropriate for HMRC to notify HMC&TS of any appeal or application on behalf of a taxpayer. The taxpayer should notify his appeal to HMC&TS. Further, we regard it as undesirable for any appeal or application to be notified to HMC&TS without completion of the required Notice of Appeal form. The exercise of completing that form is intended to ensure that all relevant information is provided to HMC&TS, and ultimately to the Tribunal, so that proper account can be taken of that information for the purposes of the appeal or application. In particular, the Tribunal needs to have a clear statement of the grounds of appeal or the grounds for the application. Use of the proper forms in the present case would have avoided the difficulties encountered by Barnes Roffe in relation to the closure notice application and the appeal against the Sch 36 notice.

The background facts

9. The evidence consisted of two bundles of documents, provided respectively by Barnes Roffe and HMRC; the former contained Mr Alkadhi's witness statement, together with various supporting documents. Mr Alkadhi also gave oral evidence.

10. From the evidence, we find the following background facts; any matters which were disputed are considered later in this decision.

11. On 15 September 2009 HMRC wrote to Mr Alkadhi. They explained that they were reviewing his tax affairs. They enclosed a tax return form for the year ended 5 April 2008, and asked him to arrange for this to be completed. The reason for approaching him was that they had been notified by a life assurance company of a chargeable event in respect of a policy held by Mr Alkadhi.

12. On 9 November 2009 HMRC wrote to Mr Alkadhi responding to a letter of his dated 5 November 2009 (not included in the evidence). They gave information as to P11D details in respect of an employer named Allied TC PLC. They detailed a beneficial loan of £3,200; there were no expenses on the P11D.

13. Mr Alkadhi subsequently completed the return and submitted it. No copy of the completed return was available; at a later stage HMRC sent a print-out of a computer record of a return with limited information shown. (We consider this below.)

14. On 8 March 2010 HMRC wrote to Mr Alkadhi to inform him that his tax affairs had been registered for investigation under Code of Practice 8. They also confirmed that it was their intention to enquire into his 2007-08 return under s 9A of the Taxes Management Act 1970 ("TMA 1970"). They stated that according to their records, he did not have an agent appointed to represent him in respect of his tax affairs.

15. On 16 March 2010 Mr Alkadhi signed a Form 64-8. This did not specify the details of his agent. However, on 31 March 2010 Margaret Fisher of HMRC wrote to Mr Wood at Barnes Roffe, referring to a meeting between him and her which had taken place on 26 March 2010. She requested various items of information.

16. On 20 May 2010 Barnes Roffe wrote to HMRC. After indicating that their client wished to be as co-operative and reasonable as possible in relation to HMRC's requests for information, they provided various items of information in response to the 31 March letter, and then stated:

5 "We consider that your enquiries are groundless. Any determinations that you raise will be vigorously resisted. Please close your file without further delay."

17. Margaret Fisher replied on 10 June 2010. She expressed her concern about the responses provided in relation to her information requests. Despite the comments
10 concerning co-operation, Mr Alkadhi had failed to provide a significant amount of information which had been requested, and the responses had been vague at best. She made detailed comments on the responses in Barnes Roffe's letter of 20 May 2010. She referred to a Sch 36 information notice which she was sending to Mr Alkadhi that day.

15 18. The Sch 36 notice issued to Mr Alkadhi requested information concerning him from Allied TC plc, and from Ramy Limited.

19. On 30 June 2010 Barnes Roffe wrote to HMRC to raise various matters concerning Mr Alkadhi and his brother. They provided five expired passports for Mr Alkadhi, and referred to him having made hundreds of business trips around the
20 world; they argued that it was unreasonable for him to be expected to provide exact dates of each and every trip over a long period of time. HMRC replied on 5 July 2010, returning the passports and enclosing a chargeable event certificate relating to a policy held by Mr Alkadhi.

20. On 29 July 2010 Barnes Roffe wrote to HMRC with a view to providing
25 additional information, as set out in their letter. They requested the issue of a formal closure notice in respect of the enquiry into Mr Alkadhi's 2007-08 return, and the closure of HMRC's file. Margaret Fisher replied on 25 August 2010, and commented on the points raised in Barnes Roffe's letter. She requested that the information specified in her letter should be provided by 24 September 2010.

30 21. On 17 November 2010 Margaret Fisher wrote to Barnes Roffe. She stated that no responses had been received to her letter dated 25 August 2010. She indicated that Tribunal approval had been obtained for third party requests to be issued to Ramy Limited and to Allied TC plc in accordance with paragraph 2 of Sch 3, and enclosed copies of the formal notices issued to the companies and to Barnes Roffe's clients.

35 22. On 14 December 2010 Barnes Roffe replied. They commented that HMRC continued to ask for information regarding their client that they considered to be unreasonable, and that HMRC continued not to provide a copy of Mr Alkadhi's self
40 assessment return for 2007-08. They stated that their client had, without seeking advice, hurriedly completed a tax return for a year in which he was not resident in the UK, without considering the possible implications of his actions. The fundamental point was that HMRC's enquiries related to a year in which Mr Alkadhi was not

resident in the UK, irrespective of the manner in which he had completed his tax return. They requested the issue of a closure notice in respect of HMRC's enquiries.

23. In a separate letter of the same date, Barnes Roffe responded on behalf of Ramy Limited to the request for information in respect of Mr Alkadhi.

5 24. In her letter to Barnes Roffe dated 4 February 2011, Margaret Fisher explained that it had not been possible to obtain a copy of Mr Alkadhi's 2007-08 return to send to them. She restated the information request as an appendix to her letter; if she did not receive the information, she might consider the use of formal powers under Sch 36.

10 25. On 8 April 2011 Barnes Roffe replied. They provided information concerning two properties in the UK in which Mr Alkadhi had interests. They reiterated that HMRC were enquiring into a year during which Mr Alkadhi had not been UK resident, and asked for the issue of a closure notice.

15 26. In her reply dated 16 May 2011 Margaret Fisher commented that at the time that the 2007-08 return had been issued to Mr Alkadhi, HMRC were not aware that he had left the UK, as no form P85 had been completed at the time of departure. HMRC would therefore issue a return in any situation where they had received information indicating that income or gains might have been chargeable to tax in the UK. She referred to various items of information which remained outstanding, and asked for
20 other details to be provided.

27. Barnes Roffe replied on 2 June 2011, setting out various points of information. They reiterated that the enquiry was into Mr Alkadhi's tax return for 2007-08, a year when he was no longer UK resident; as a result, the enquiry was groundless. They repeated their request for the issue of a closure notice. Margaret Fisher responded on
25 6 July 2011, acknowledging the documents received, but requesting further information on certain matters. She indicated that all the third party information had been obtained, and was being analysed.

28. On 10 August 2011 Margaret Fisher wrote again to Barnes Roffe requesting clarification of a number of matters as set out in her letter. She asked for the
30 documentation and information to be provided by 9 September 2011.

29. On 5 September 2011 Margaret Fisher wrote to Ramy Limited at Barnes Roffe's address, stating that certain information provided in response to the Sch 36 notice had been incomplete. She asked for various questions to be answered, and for the missing information to be provided.

35 30. On 11 November 2011, Margaret Fisher wrote to Barnes Roffe to inform them that as no response had been received to her letter dated 10 August 2011, she had that day sent a Sch 36 notice to Mr Alkadhi.

31. On 28 November 2011, Barnes Roffe wrote (as indicated at paragraph 2 above) to the Tribunals Service applying for a direction requiring HMRC to issue a closure

notice to Mr Alkadhi in respect of the enquiry for 2007-08. On the same date Barnes Roffe wrote to HMRC to appeal against the Sch 36 notice issued to Mr Alkadhi.

5 32. Margaret Fisher replied on 19 December 2011. She explained that she had revisited the notice in the light of the appeal, and was satisfied that all the information and documentation being requested was reasonably required for the purposes of checking Mr Alkadhi's tax position. Whilst some of the items related to periods prior to the stated date of residence, in all cases the period covered was the tax year in which Mr Alkadhi had stated that he became resident in the UK, ie 2001-02, and she believed that this was relevant to his tax affairs. Later periods were also covered, including 2007-08, for which a valid enquiry was being conducted. As no P85 had been completed at the stated time of Mr Alkadhi's departure, she required the information and documentation for later periods to establish the correct date of departure from the UK and also to verify the contents of the 2007-08 self assessment return submitted by Mr Alkadhi, in which he had not stated that he was non-resident. 10 She asked that if Barnes Roffe continued to believe that the information and documentation requested was not reasonably required, they should address each item individually stating specifically why they believed that it was not required. She also suggested that the application for a closure notice should be delayed until matters relating to the Sch 36 notice had been concluded. If Barnes Roffe were unable to agree to withdraw the closure notice application, she would be requesting that the appeal under paragraph 29 of Sch 36 and the closure notice application should be heard together. 15 20

25 33. Barnes Roffe replied on 11 January 2012. They confirmed that they had no intention of withdrawing the closure notice application. They set out a series of comments on the items in the Sch 36 notice.

30 34. On 24 February 2012, Graham Kay of HMRC replied, explaining that he had taken over the enquiry from Margaret Fisher, who was now on maternity leave. Mr Kay dealt in detail with the points raised in Barnes Roffe's letter, and stated that he was prepared, on a without prejudice basis, to remove three items from the request at that time. These items were, respectively, information concerning the settlement agreement, information concerning the acquisition of a UK property, and information concerning the sale of that property. He requested that the documents and information should be provided to him within 30 days of the date of his letter, which would be around four and a half months after the Sch 36 notice had originally been issued. He offered an independent review by another HMRC officer not involved in the decision to issue the Sch 36 notice or in the appeal itself. 35

36. By their letter dated 6 March 2012, Barnes Roffe accepted the offer of an independent review. In relation to HMRC's view that the appeal against the Sch 36 notice should be heard before the closure notice application, Barnes Roffe disagreed; 40 if the Tribunal were to conclude that the closure notice should be issued, the Sch 36 notice would be irrelevant and therefore the closure notice should be considered first.

36. On 18 April 2012 the Review Officer, SD Kirkham, set out the conclusions of the review, that the decision to issue the Sch 36 notice on 11 November 2011 should

be upheld. The information and documents were reasonably required. Mr Alkadhi had invested substantial amounts [referred to as “excessive”, which we consider to be a pejorative adjective] of funds in the UK, and HMRC were looking to evidence the source of those funds. As a result of making the appeal, Mr Alkadhi had had an extra
5 four months to respond. He had considered the authorisation given by the authorised office, who had believed the request to be necessary in Mr Alkadhi’s case.

37. Barnes Roffe replied on 25 April 2012. Their letter was addressed to HMRC Special Investigations in Nottingham, and not to Special Investigations London, Fraud and Avoidance, the departmental address from which the review letter had been sent.
10 They stated that they would be notifying the First-tier Tribunal that they wished to proceed with Mr Alkadhi’s closure application regarding the enquiry and, if necessary, his appeal against the Sch 36 notice. They reiterated their disagreement with HMRC’s view that the appeal against the Sch 36 notice should be heard before the closure notice application. They also repeated a request, made in their letter dated 29
15 February 2012 acknowledging the review, that documentary evidence should be provided to show that correct procedures had been followed as regards paragraph 20 of Sch 36 (concerning documents originating more than six years before the date of the notice).

Arguments for Mr Alkadhi

20 38. Mr Wood emphasised that under s 28A(6) TMA 1970 the Tribunal was required to give the closure notice direction applied for unless it was satisfied that there were reasonable grounds for not issuing a closure notice within a specified period.

39. The burden of proof that there were such reasonable grounds lay with HMRC; it was not for the taxpayer to justify the giving of that direction.

25 40. Mr Wood contended, on the basis of Mr Alkadhi’s employment history and residence status, that he had not been resident in 2007-08. He had received employment income in 2007-08 in respect of duties that were wholly performed outside the UK. HMRC should close the enquiry into the return for that year, as no liability to UK tax arose. Mr Wood submitted that HMRC’s continuing enquiries were
30 little more than a “fishing expedition” into other tax years and other persons’ tax liabilities; this was quite inappropriate. If HMRC had discovered that there were unassessed liabilities for other years or in respect of other persons, they should issue discovery assessments, rather than conducting enquiries into a tax return in respect of which no UK tax liability could arise. He requested that the Tribunal should give the
35 direction requested.

41. He emphasised that the primary issue was the “non-existent” tax return for 2007-08. The version produced by HMRC was a “computer dump” of information; he did not accept this as evidence.

40 42. In relation to the Sch 36 notice, Mr Alkadhi had co-operated throughout with HMRC. It had to be recognised that Mr Alkadhi was outside the UK; the information which had been requested was voluminous and not easily checked. Mr Alkadhi’s

position was simple; he was an employee, a worker, as indicated by his evidence. Mr Wood submitted that even if the Tribunal concluded that it could not direct that a closure notice should be issued, the Sch 36 notice was unduly burdensome.

Arguments for HMRC

5 43. Mr Kane referred to the history of HMRC's enquiries. These had started on 8
March 2010. Mr Alkadhi had been resident in the UK as at the opening of the enquiry.
HMRC's investigation into Mr Alkadhi's tax affairs was a Code of Practice 8 ("COP
8") enquiry. Their letter was also a notification of an enquiry under s 9A TMA 1970
10 into Mr Alkadhi's 2007-08 return. Thus HMRC was not merely pursuing an enquiry
into Mr Alkadhi's 2007-08 position; the Tribunal should not be misled by any
contrary suggestion. The COP 8 enquiry was not restricted to any particular risk. The
key risk here as perceived by HMRC was "residency".

15 44. Mr Kane made various submissions on the evidence (considered below). The
answers to various key questions were still required in order to enable HMRC to
conclude their enquiries. The issue of Mr Alkadhi's residence status at relevant times
remained unresolved. HMRC were not yet in a position to make an informed
judgment.

20 45. Mr Kane requested that the Tribunal should refuse to direct that a closure notice
be issued. He also asked the Tribunal to confirm the information notice under Sch 36
as sent to Mr Alkadhi, but as modified by agreement with Mr Kay to exclude items 7,
8 and 9 in the Schedule. (We consider this modification below.)

Discussion and conclusions

25 46. HMRC's enquiry under COP 8 was not expressed in their letter dated 8 March
2010 to be limited to any specific period. There is no general power given to the
Tribunal to make any form of direction in relation to such an enquiry. The only basis
for the Tribunal to intervene is under s 28A(6) TMA 1970 in respect of the enquiry
under s 9A TMA 1970 into Mr Alkadhi's return for the year 2007-08; as Mr Wood
submitted, this requires the Tribunal to give the direction sought unless the Tribunal is
30 satisfied that there are reasonable grounds for not issuing a closure notice within a
specified period. As he further submitted, the burden of so satisfying the Tribunal
falls on HMRC.

35 47. In relation to the closure notice application, our attention is therefore limited to
2007-08. Any decision by us in relation to the closure notice cannot affect the COP 8
enquiry, which is not specified to relate to any particular year or years; it follows that,
whether or not we make any direction under s 28A(6) TMA 1970, this does not
preclude HMRC from pursuing the COP 8 enquiry in relation to 2007-08 as well as to
other years.

The closure notice application

48. Consideration of Mr Alkadhi's application does not require us to make detailed findings as to the information provided in relation to the s 9A enquiry. The question is whether HMRC have satisfied us that there are reasonable grounds for not issuing a closure notice within some specified period.

49. The principal issue raised by the application is that of Mr Alkadhi's residence status. Mr Wood submitted that Mr Alkadhi was not resident in the UK for the year 2007-08. Mr Alkadhi's evidence was that he had left the UK in June 2006 and had been working full time in Morocco for a company trading under the name "i2" from June 2006 and had lived and worked abroad for i2 until January 2009. As his children were in school and he did not want to interrupt their education, they and his wife had remained in the UK whilst he lived and worked in Morocco.

50. Mr Kane referred to the "schedule of residence" attached to Mr Alkadhi's witness statement. This information had not previously been provided to HMRC. Thus it had only been received when the witness statement had been served on HMRC on the Wednesday before the hearing. The question whether Mr Alkadhi had been working full-time abroad for 2007-08 was still subject to open enquiry; HMRC had not yet had sufficient time to consider it.

51. The evidence required to establish whether an individual has been living and working full-time abroad is not necessarily simple, as was shown in the case of *Hankinson v Revenue and Customs Commissioners* [2009] UKFTT 384 (TC), TC 00319. We consider it appropriate, and probably necessary, for HMRC to examine in detail all the information contained in the "schedule of residence" and to review all the relevant circumstances. We are unable to assess how much time this process will take. As HMRC's enquiry under s 9A TMA 1970 into Mr Alkadhi's return for 2007-08 is not complete, and as no time limit can be set for the enquiry to be completed, we are satisfied that there are reasonable grounds for not issuing a closure notice within a specified period. We do not consider this conclusion to be affected by the absence of a copy of the 2007-08 return as submitted by Mr Alkadhi, although we do accept that it is undesirable for such evidence to be omitted from the documents for the hearing. We therefore refuse Mr Alkadhi's application for a direction that HMRC should issue a closure notice in respect of the enquiry into his 2007-08 return.

The Sch 36 notice

52. As HMRC raised no objection to the admission of the late appeal, and as we were satisfied that it was in the interests of justice to admit and hear Mr Alkadhi's appeal, we proceeded to hear his appeal.

53. Paragraph 1 of Sch 36 enables an officer of HMRC to require a person ("the taxpayer") to provide information or to produce a document—

“ . . . if the information or document is reasonably required by the officer for the purposes of checking the taxpayer's position.”

54. Paragraph 29 of Sch 36 enables a taxpayer who has been given a taxpayer notice to appeal against that notice, subject to the qualifications in paragraph 29(2) and (3), neither of which applies to Mr Alkadhi. Unlike the position under paragraph 30 of Sch 36, there is no specific limitation placed on the grounds of appeal under paragraph 29. The grounds of appeal as set out in Barnes Roffe's letter to HMRC dated 28 November 2011 were as follows:

10 “(a) The information and documentation that you require our client to provide and produce is not reasonably required for the purposes of checking his tax position. This is particularly the case in view of the fact that, during the past 20 years, our client was only resident in the UK for the period from January 2002 to May 2006 and your taxpayer notice requires the production of information and documents in respect of periods before and after his period of UK residence; and

15 (b) Even if the specified information or some of it were reasonably required for those purposes, in view of the amount of information and documentation requested by you, the time limit for complying with your requirements is inadequate.”

55. Paragraph 32 of Sch 36 provides for procedure in appeals against Sch 36 notices. Paragraph 32(3) provides:

20 “(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.”

25 56. Paragraph 32(5) of Sch 36 provides:

 “(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 Schedule is final.”

30 57. The Sch 36 notice dated 11 November 2011 required production of the documents and information specified “within 35 days of this notice”. The items specified in the notice (set out in more detailed terms than shown below) were:

- (1) Details of UK bank accounts and UK credit cards;
- (2) Information relating to payments in respect of Mr Alkadhi's employment with Allied TC plc;
- 35 (3) Information concerning a settlement agreement in respect of certain litigation involving i2, Allied TC plc, Mr Alkadhi and his brother, Ramy Limited and a UAE company;
- (4) Information relating to transactions concerning a UK property;
- (5) Information concerning a UK life insurance policy;

(6) Details of the education of Mr Alkadhi's children and the amounts paid in respect of the education;

(7) Details of remittances made directly or indirectly to the UK during the period from 1 January 2002 to 31 May 2006;

5 (8) UK bank and building society statements for the above accounts from 6 April 2001 to 5 April 2008, and copies of UK credit card statements for the same period;

(9) Documentation concerning Mr Alkadhi's employment with Allied TC plc;

10 (10) Revised agreements and any other supporting documentation linked to the settlement agreement;

(11) A signed copy of a loan agreement in relation to monies invested in Ramy Limited;

(12) Documentation concerning property transactions;

(13) Documentation relating to overseas employments;

15 (14) Documentation to support the funding of the life insurance policy, and relating to funds received on all surrenders.

(15) If bank statements did not show evidence of funding of payments for education, other supporting documentation to be provided to evidence the source of funds.

20 58. As appears from the background facts as set out above, HMRC's enquiries under COP 8 and under s 9A TMA 1970 have been continuing for a period of over two and a half years. Mr Kane submitted that HMRC had still not "got to the bottom of" their enquiries into Mr Alkadhi's tax position. In an internal HMRC memorandum dated 2 November 2011 requesting authorisation for documents over six years old, Margaret Fisher had stated:

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"Additionally Mr Bashar Alkadhi states that he became resident in the UK on the 01/01/2002 and became non-resident on the 31/05/2006 after cessation of employment with Allied TC plc. However, information held shows that a number of assets were acquired/disposed of immediately outside of this window and also that payments continued to be made to him from Allied TC plc following his stated date of cessation of employment and non-residence. Therefore it is pertinent to establish the position either side of the stated dates of arriving/departing from the UK to ensure the correct taxation treatment of the various transactions is adopted."

(The Authorised Officer of HMRC, Anneli Campbell, gave authority on 10 November 2011 for documents more than six years old to be included in the Sch 36 notice.)

40 59. The amount of information and documentation required by the Sch 36 notice is substantial. However, the correspondence and discussions between Mr Alkadhi's advisers and HMRC have been continuing for a lengthy period, and it has not been possible for matters concerning the enquiries to be resolved as between Mr Alkadhi and HMRC. The details of the items required by the notice have been known to Mr

Alkadhi and Barnes Roffe for about twelve months, although it must be acknowledged that notice of appeal against the notice was given to HMRC within just over two weeks from the date of the Sch 36 notice. As stated in HMRC's review letter, the making of the appeal allowed extra time for the information to be produced in response to the notice.

60. We have considered the nature and quantity of information covered by the Sch 36 notice. Despite the substantial amount of information covered by the notice, we are satisfied that it is reasonably required for the purpose of checking Mr Alkadhi's tax position. Barnes Roffe have argued on Mr Alkadhi's behalf that the Sch 36 notice is linked to the closure notice application in respect of 2007-08. We do not agree; even if we had agreed to direct the issue of a closure notice, the broader COP 8 enquiry is not limited to 2007-08, and a considerable proportion of the information and documents required by the Sch 36 notice clearly relates to other years.

61. We have also considered the other argument raised by Barnes Roffe on Mr Alkadhi's behalf, that the time limit for complying with HMRC's requirements in the Sch 36 notice was inadequate. As we have already commented, the additional time which has elapsed since the issue of the notice as a result of the appeal against it has provided further opportunity for compliance with the terms of the notice. However, we accept that as a result of the appeal being made, action will not have been taken in relation to at least some of the items covered by the notice.

62. A further complication, referred to by Mr Kane, is the acceptance in Mr Kay's 24 February 2012 letter, on a without prejudice basis, that the information concerning the three items referred to above, need not be provided "at this time". The terms of this without prejudice removal of items from the notice are unclear. We take it that Mr Kay was intending this offer to operate on the basis that the matter could be settled without resort to a hearing of the appeal against the notice. If such an offer is to be made, its terms and limitations need to be made clear. In any event, we do not consider that we should take into account any matters which have been dealt with between the parties on a without prejudice basis. The Sch 36 notice in respect of which Mr Alkadhi has appealed is the full notice issued by HMRC on 11 November 2011, including the three items referred to by Mr Kay. If HMRC and Mr Alkadhi subsequently reach some form of agreement as to the terms on which certain items do not yet require to be provided, this is a matter for the parties and not for this Tribunal.

63. Under paragraph 32 of Sch 36, we therefore confirm the Sch 36 notice as issued on 11 November 2011, subject to one variation. Instead of the requirement to produce the information and documentation specified in the Schedule to HMRC's letter dated 11 November 2011 within 35 days of the date of the notice, we substitute a requirement to produce that information within two calendar months of the date of release of this decision.

64. As a result of paragraph 32(5) of Sch 36, our decision on the Sch 36 notice issue is final.

Summary of conclusions

65. We refuse Mr Alkadhi's application for a closure notice in respect of 2007-08, and dismiss his appeal against the issue of the Sch 36 notice, which we confirm subject to the variation specified above.

5 **Right to apply for permission to appeal**

66. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision, so far as it relates to the closure notice application only, has a right to apply for permission to appeal on a point of law to the Upper Tribunal 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.

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**JOHN CLARK
TRIBUNAL JUDGE**

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RELEASE DATE: 3 December 2012