



**TC02523**

**Appeal number: TC/2012/07612**

***INCOME TAX – Notice for Production - Was it reasonably required and authorised? – Yes – Parties agree to vary terms of the Notice – Appeal allowed in part***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SERPOL LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE  
RICHARD THOMAS**

**Sitting in public at Bedford Magistrates' Court, 3 St Pauls Square, Bedford on 9  
January 2013**

**Shyam Pattanni and Nicola Smith of Accountax Consulting for the Appellant**

**Paul Reeve, Presenting Officer, and David Werin, Assessing Officer, for HMRC**

## DECISION

### The Appeal

1. The Appellant appealed against a notice to produce information and documents issued on 8 November 2011 pursuant to paragraph 1 of Schedule 36 to the Finance Act 2008.

2. The notice required the Appellant to produce the information and records used by it to identify that 106 of the 109 workers noted on the spreadsheet entitled “S116 Analysis of Associates Payments to 2005/06” performed the roles of project managers, witness statements takers or worked at home on projects.

3. In a previous Appeal *Serpol Limited v HMRC* [2011] UKFTT 174 (TC) involving the same parties released on 14 March 2011, the Tribunal decided that

(1) The section 8 Notice<sup>1</sup> setting out the Appellant’s potential liability for Class 1 National Insurance Contributions was invalid.

(2) In respect of the regulation 80 determinations<sup>2</sup> for income tax for 2002/03 to 2007/08 (inclusive) the Tribunal found that the Appellant’s associates who supplied services to Bedfordshire Police in the capacity of disclosure officers, indexers, exhibit officers, and scene of crime officers were caught by the “agency legislation”. This meant that the income received by these associates from the supply of their services was classed as employment income for the purposes of income tax.

4. This decision provides the context for the issue of the notice of production, the subject of this Appeal. This Tribunal accepts HMRC’s contention that the information requested under the notice was necessary to give effect to the decision released on 14 March 2011. The Tribunal notes that the determinations for unpaid tax dating back to 2002/03 remained in force.

5. The existence of these determinations was significant in four respects. First, they undermined the Appellant’s assertion that the notice was unreasonable because HMRC was time barred from collecting unpaid income tax of more than six years old. Second, the Appellant may be at a disadvantage if and when the quantum is determined if it did not provide the requested information because the onus of proving the quantum excessive is on the Appellant. Third, the determinations confirmed the relevance of the request for information for each tax year starting in 2002/03 to 2005/06. Finally, they justified the conclusion that the information was reasonably required for the purpose of checking the Appellant’s tax position.

6. The parties differed in their interpretation of the effect of the previous Tribunal’s declaration on the invalidity of the section 8 Notice. The Appellant was of the view that the declaration precluded HMRC from recovering alleged arrears of NI

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<sup>1</sup> Issued under section 8 of the Social Security Contributions (Transfer of Functions etc) Act 1999

<sup>2</sup> Regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003.

contributions. HMRC considered the existence of a protective claim under the Limitations Act 1980 lodged at Newcastle County Court on 21 November 2008 enabled it to collect potential arrears of NI contributions dating back to 5 October 2002. The protective claim covered the period 5 October 2002 to 5 April 2008 for  
5 Class 1 NI contributions of £336,156.67. This was not a matter for determination by this Tribunal, and in all probability would require a decision by the County Court. It was also not relevant to the issue of the notice for production in view of the existence of the determinations for unpaid tax dating back to 2002/03.

7. The Appellant contended that the notice for production was invalid because it  
10 required the permission of an authorised officer for documents dating back more than six years old. The Appellant also argued by reference to Hansard reports of debates on the Finance Bill 2008, and HMRC’s internal guidance that there was no evidence before the Tribunal of an authorised officer performing his duties in accordance with Parliament’s intention and internal guidance.

15 8. HMRC countered by stating that the requirement for authorisation was only necessary if the notice related to documents created entirely over six years ago. HMRC pointed out that the notice was issued on the 8 November 2011 and referred to information and records used to compile the spreadsheet “S116 Analysis of  
20 Associates Payments to 2005/06”. HMRC submitted that it was reasonable to conclude that the spreadsheet could not have been created any earlier than April 2006, in which case the document was within the stipulated six year period.

9. HMRC stated that, in any event, Mr R J Martin, an authorised officer, had given prior approval to the issue of the notice for production by Mr Werin. HMRC supplied copies of memoranda dated 19 October 2011 and 7 November 2011 from Mr Martin  
25 to Mr Werin to evidence this fact. Further Mr Werin gave sworn evidence that Mr Martin was an authorised officer for the purposes of schedule 36 tax payer’s notice.

10. Paragraph 1 of Schedule 36 to Finance Act 2008 enables an officer of HMRC to require a person by notice to provide information and or produce documents if they are reasonably required for the purpose of checking the taxpayer’s tax position.  
30 Paragraph 20 states that a notice may not require a person to produce a document if the whole of the document originates more than six years before the date of the notice, unless the notice is given by or with the agreement of an authorised officer. Paragraph 59 states that a reference in Schedule 36 to an authorised officer of Revenue and Customs is a reference to an officer of Revenue and Customs who is, or is a member  
35 of a class of officers who are, authorised by the Commissioners for the purpose of that provision.

11. The Tribunal notes that the requirement for the approval of an authorised officer only applied to documents of more than six years old, not to information. The Tribunal is satisfied that the notice of production was caught by the six year rule in  
40 relation to documents compiled for the tax years of 2002/03, 2003/04 and 2004/05. In relation to those years the fact that the spreadsheet was compiled later was irrelevant.

12. The Tribunal considers that the wording of paragraph 20 was clear and unambiguous. In this respect the Appellant's references to Hansard to establish Parliament's legislative intention with regard to taxpayer notices was irrelevant.

13. Under paragraph 20 the sole issue for the Tribunal is whether the notice was given by or with the agreement of an officer, authorised by the Commissioners for the purposes of Schedule 36. The Tribunal accepted Mr Werin's sworn testimony that Mr Martin was an authorised officer for the purposes of Schedule 36, and that he gained Mr Martin's prior approval to the notice, which was also confirmed by the memoranda exhibited in HMRC's bundle at C19 and C20. Given these findings the Tribunal is satisfied that the notice was issued with the approval of an authorised officer. The Tribunal observes that proof of the authorised status of an officer is normally established by HMRC's production of the official list of authorised officers. The Tribunal expressed its surprise that HMRC did not have the list in its possession at the hearing.

14. The Appellant's challenges on whether Mr Martin exercised his responsibilities as an authorised officer in accordance with Parliament's legislative intention and HMRC's internal guidance were not matters that fell within the Tribunal's jurisdiction. The challenges if valid were potentially issues for judicial review and beyond the Tribunal's competence which is derived from statute.

15. HMRC accepted that the scope of the notice for production was limited to individuals supplied to Bedfordshire police.

16. Given the above findings the parties indicated their willingness to reach an agreement on the terms of the notice of production. The Tribunal directed that the parties draft a notice for production for approval by the Tribunal by no later than 4pm on 15 March 2013. The Tribunal also directed HMRC to provide facilities at an office convenient for the Appellant's representative to inspect the official list of authorised officers evidencing Mr Martin's authorisation at the relevant date for the purposes of Schedule 36. The reason for this direction was to give assurance to the Appellant on the authorised status of Mr Martin. The Tribunal, therefore, decides to vary the order for production in accordance with the approved order agreed by the parties.

17. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision 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.

**MICHAEL TILDESLEY OBE**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 7 February 2013**