



TC02561

Appeal number: TC/2012/847

INCOME TAX – Information notice – need for clarity – whether required to be issued by authorised officer – whether reasonable grounds for issue: to be determined by reference to facts known at issue not later

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL JARVIS

Appellant

- and -

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

**TRIBUNAL: JUDGE CHARLES HELLIER
PHILIP GILLET FCA**

Sitting in public at Brighton on 4 February 2013

Peter Clarke for the Appellant

Gloria Orimoloye for the Respondents

DECISION

1. Paragraph 1 schedule 36 FA 2008 provides:

5 "1 (1) An officer of [HMRC] may by notice in writing require a person ("the taxpayer") --

(a) to provide information, or

(b) to produce a document

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

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

15 2. Mr. Jarvis appeals against a notice issued under this provision requiring the production of certain documents and information. The notice, in a letter dated 12 December 2011, contains the following :

"Documents or information that we need

[there follows an irrelevant paragraph on the extended meaning of "documents"]

1. Sight of your bank statements for all your accounts you have an interest [in] or have been interested [in] for the period between April 2010 and April 2011.

20 2. Full details of your personal income and expenditure for the period between April 2010 and April 2011."

25 3. Before us Mr. Clarke raised three objections to the notice (other objections had been made in correspondence but Mr. Clarke, rightly, did not pursue them before us). These were: (1) the dates issue; (2) the authorised officer issue; and (3) the reasonably required issue.

Background

4. We heard oral evidence from Mr Pulling, the officer of HMRC who had issued the notice, and had before us a bundle of documents including copy correspondence and telephone attendance notes.

30 5. Mr Jarvis' last tax return was for the year 2005/06. He notified HMRC in May 2007 that he had ceased to carry on his trade as a painter and decorator. His last tax return indicated that thereafter his income would have been confined to pension and annuity income. At sometime in 2011 it seems that HMRC had a tipoff that Mr. Jarvis had income from a decorating trade in addition to his pension income. In 2011 Mr.
35 Pulling of HMRC wrote to Mr. Jarvis asking for details of undeclared self-employment income. There followed some correspondence between Mr. Pulling and Mr. Clarke about the legality of Mr. Pulling's request. On 12 December 2011 Mr. Pulling issued the information notice described above.

6. We note that following the issue of that notice, inter alia details of income and expenses (giving rise to a net loss) arising from a flat in Eastbourne owned by Mr. Jarvis and his wife were disclosed to HMRC. For reasons we shall later explain we consider that information irrelevant to the issues before us.

5 **1. Dates.**

7. Mr. Clarke says that paragraph 29 schedule 36 provides a right to appeal (1) against a notice given under paragraph 1, or (2) against any requirement in that notice. We agree.

10 8. Mr. Clarke says that for a notice to be validly given it must specify what is required. The taxpayer must be able to determine from the notice what he is required to do. We agree.

15 9. But we believe that if a notice contains one or more requirements that are adequately specified and one or more requirements which are not, that will not make the whole notice invalid but will deprive the notice of effect in relation to the inadequately specified items.

10. As a result we believe that an appeal against such notice may be properly determined if the decision addresses the inadequately specified elements of the notice without setting aside the notice as a whole.

20 11. Mr. Clarke says that the notice inadequately specifies the period for which the relevant documents and information were required. It says, both under 1. and 2.: "April 2010 and April 2011"; it does not specify which dates in April in either case. As a result he says the taxpayer could not determine from the notice what his obligations were.

25 12. We agree that the notice is deficient in that respect. It is not clear whether the period is 1 April to 1 April or 30 April to 1 April or some other combination of April dates. But it is clear that anything following 30 April 2010 and before 1 April 2011 is required.

30 13. Subject to the other issues, we therefore find that the notice may properly be taken to impose obligations to produce documents and provide information relating to the period from 30 April 2000 to 1 April 2011. We do not find that the uncertainty as to dates in April 2010 and April 2011 invalidates the notice as a whole.

2. Authorisation.

35 14. Mr. Clarke asserts that Mr. Pulling (who gave the notice) was not an authorised officer within paragraph 59 Schedule 56 and was required to be such for the notice to be valid. Paragraph 59 provides:

"A reference in a provision of this Schedule to an authorised officer of [HMRC] is a reference to an officer of [HMRC] who is, or is a member of a class of

officers who are, authorised by the Commissioners for the purposes of that provision."

15. Mr. Clarke points to HMRC's manuals which indicate that authorised officers are specifically trained and identified, and that where intrusive powers are used, authorisation should be by an authorised officer different from the caseworker.

16. Mr. Pulling accepted that he was not an authorised officer for the purposes of paragraph 59.

17. However, we do not believe that the involvement of an authorised officer is necessary for the proper issue of information notice under paragraph 1 schedule 36. That is because:

(1) there is no such requirement in the words of paragraph 1;

(2) by contrast, in paragraph 3 of schedule 36, it is specified that a tribunal may not approve the giving of the notice to a third party, ie a notice under paragraph 2 of schedule 36, unless the application is made by or with the agreement of an authorised officer. Similarly in paragraph 5A of schedule 36 the power to obtain information about persons whose identity is not ascertained from a third party is reserved to an authorised officer;

(3) the statutory policy appears clear: more intrusive powers, and in particular those which require information or documents from persons other than the taxpayer, require greater safeguards before they are used. In the case of seeking information from a taxpayer the provision of such protection is seen as less important because the provision of the information is part of the duty of the taxpayer to satisfy HMRC that his tax is correct.

18. We conclude that paragraph 1 does not require the involvement of an authorised officer and that a notice issued by an unauthorised officer is not invalid on that account. We do not regard the statements in HMRC's manuals as capable of affecting the requirements of this legislation.

3. Reasonably required.

19. Mr Clarke says that the information sought by HMRC was not reasonably required for the purpose of checking Mr Jarvis' tax position.

20. Paragraph 1 provides that an officer may by notice require a taxpayer to provide information or produce a document "if the information or document is reasonably required by the officer for the purposes of checking the taxpayer's tax position" [our emphasis].

21. We highlight "is" in the statutory language. A notice may be issued only if at the time it is issued its information is reasonably required by the officer for the relevant purpose. That requires us to have regard only to what the officer knew or did not know at the time of the issue of the notice. It means that anything subsequently discovered is irrelevant to whether the notice was validly issued.

22. For that reason the information about Mr. Jarvis's rental income recounted at paragraph 6 above is irrelevant to this appeal: not only was no suggestion made that Mr. Pulling had the information on 12 December 2011, but also the SDLT return (from which Mr Pulling gleaned knowledge of Mr Jarvis' ownership of the flat) in the bundle before us shows a date of 4 January 2012, after the date of the information notice. For this reason we also disregard concerns expressed by Mr. Pulling in his evidence which touched upon matters which came to light after the date of the information notice.

23. Mr. Pulling told us that before he had issued the information notice he had the following information:

(1) Mr. Jarvis's last return was for 2005/06 and HMRC's records indicated that his trade had finished on 17 May 2006. HMRC's telephone log recorded a call from Mr. Jarvis on 10 May 2007 indicating that he had ceased to trade. His reported income, other than that from his trade was from pension and annuities;

(2) information from someone that Mr. Jarvis was not being taxed upon certain trading income;

(3) a printout from HMRC's computer system which relied upon statutory reports from the Nationwide Building Society to HMRC of interest earned by Mr. Jarvis in 2006/07 and 2007/08. The programme behind the printout estimated that a further investment of £3,000 had been made into the account in 2007/8; Mr Jarvis wanted to check whether this derived from taxable but untaxed sources ;

(4) an Experion credit report dated 28th of September 2011 showed that Mr Jarvis had a mortgage with an outstanding balance of £73,776 at 31 July 2011 (and monthly payments of £309);

(5) HMRC also put in the bundle before us another Experion credit report which showed that the balance of this mortgage was £65,200 on 4 December 2011 (in other words that some £7,500 had been repaid in 6 months). This report did not bear a date but it seemed to us possible that it had been received either before or after the issue of the information notice. In his evidence to us Mr. Pulling could not be certain that he had seen this second report before he issued information notice. On balance, however, we think it likely that he did: he was part of the Hidden Economy Group, and we accept his evidence that obtaining such reports before sending an information notice would have been his normal practice.

24. As regards (2) above, the evidence before us was wholly insufficient for it to give rise to a reasonable requirement for further information. We had no details about what was said and were provided with no way to test its reliability. Mr. Pulling declined to give further details. The onus must be on HMRC to show why something is reasonably required: unspecified information from an unspecified source does not discharge that onus.

25. However, the combination of (1), (3), and (4), were in our view sufficient for an officer to reach a reasonable conclusion that Mr. Jarvis might have had sources of

untaxed income. Seeking bank statements and details of income and expenditure were in our view reasonable items to seek in these circumstances.

Our jurisdiction

5 26. Paragraph 32 Schedule 36 provides that, on an appeal, a tribunal may confirm, vary or set aside an information notice or any requirement in it.

Conclusions

27. We decided that we should not set the notice aside.

10 28. We consider however that we should vary the notice to extend and specify the period to which it relates so that it covers the whole of the 2000/11 period. Thus we vary the notice so that "April 2010 and April 2011" is replaced by 6 April 2010 and 5 April 2011".

29. We require that the notice be complied with within 30 days of the issue of this decision.

15 30. 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.

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CHARLES HELLIER
TRIBUNAL JUDGE

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RELEASE DATE: 19 February 2013