



TC02586

Appeal number: TC/2012/09789

*INCOME TAX – Notice to provide information under FA 2008 Sch 36 –
whether reasonably required – appeal allowed in part*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEVEN SINGH

Appellant

- and -

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

**TRIBUNAL: ANNE REDSTON (TRIBUNAL
PRESIDING MEMBER)
HELEN MYERSCOUGH**

Sitting in public at Bedford Square, London on 13 February 2013

Mr Snell of Rainer Hughes, Solicitors, for the Appellant

HMRC were not represented and did not attend.

DECISION

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1. This was Mr Singh's appeal against an Information Notice issued under Finance Act 2008, Schedule 36 ("Sch 36") para 1 ("the Notice"). The appeal was allowed in part.

The parties' attendance at the hearing

10 2. Shortly before the commencement of the hearing, the Tribunal was informed that the HMRC representative was unable to attend as the train on which he was travelling had been prevented from continuing its journey.

15 3. Both Mr Singh and his representative, Mr Snell, were present. The Tribunal asked Mr Snell for submissions on whether the hearing should be postponed. Having taken instructions, Mr Snell said that the Appellant would like the hearing to continue. He submitted that the papers provided to the Tribunal set out HMRC's reasons for issuing the Notice. Moreover, Mr Singh had travelled from Nottingham for the hearing, and had retained legal advice; he had already expended both costs and time in order to attend this hearing.

20 4. The Tribunal considered the matter in the light of Rules 2 and 33 the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules"). Rule 33 says that:

"If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- 25 (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
(b) considers that it is in the interests of justice to proceed with the hearing."

30 5. There was no doubt that HMRC had been informed of the hearing. The issue was therefore whether it was in the interests of justice to proceed. The Tribunal considered the overriding objective in Rule 2, namely to "deal with cases fairly and justly", a principle which is specifically stated to include the following:

- 35 (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
40 (d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.”

6. In this case the Tribunal had to balance, in particular, the fact that HMRC’s non-attendance meant that they would be unable to “participate fully in the proceedings” with the need to “avoid delay, so far as compatible with proper consideration of the issues.” In the context of the latter, we were aware that the Notice required information about the tax year 2005-06, already over six years ago, and that the Notice itself was issued in April 2012, some ten months before this hearing.

7. The Tribunal also took into account:

- (1) the detail in the bundle of documents (“the Bundle”) helpfully provided by HMRC in advance of the hearing;
- (2) the fact that the issue the Tribunal had to decide was relatively straightforward; and
- (3) the costs Mr Singh would incur if he had to attend another hearing.

8. Having considered all of the above factors, the Tribunal decided that it was in the interests of justice to proceed with the hearing.

The background to the Notice and the issue in the case

9. The background to the Notice was not in dispute. HMRC had opened an enquiry into Mr Singh’s 2005-06 tax return, and in the course of that enquiry identified sums totalling £13,415 which had been paid into Mrs Kaur’s Nottingham Building Society and RBS bank accounts. Mrs Kaur is Mr Singh’s wife. The Notice related to the payments made into those accounts.

10. The issue in the case was whether the information required by the Notice issued by the HMRC officer on 25 April 2012 was “reasonably required” by that officer “for the purpose of checking the taxpayer’s position” (Sch 36, para 1(1)).

11. The Notice contained two requirements:

- (1) the full postal addresses of all the individuals who loaned or gifted monies to Mr Singh in the period from 6/4/05 to 5/4/06; and
- (2) the relationship between Mr Singh and each of those individuals.

The law on appealing the Notice

12. Sch 36, para 29(1) gives the taxpayer a right to appeal against the Notice, or any requirement in the Notice.

13. Sch 36, para 32 (3)-(5) sets out the powers of the Tribunal:

(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.

5 (4) Where the tribunal confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement—

- (a) within such period as is specified by the tribunal, or
- (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.

10 (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 Part of this Schedule is final.

The evidence

15 14. The Tribunal was provided with letters between the parties and between the parties and the Tribunal Service. It was evident that only some of the correspondence between the parties was included in the Bundle, but it was also clear that the issues in dispute between Mr Singh and HMRC had been wider than the origin of the money in Mrs Kaur’s building society and bank account. Mr Snell did not seek to argue that any correspondence other than that included in the Bundle was relevant to the Notice, and
20 as the Bundle had been provided by HMRC, it was reasonable for us to assume that they were also content.

15. In addition to the correspondence, the Bundle also contained the following documents:

(1) A “summary of cash receipts”. This was constructed as follows:

- 25 (a) Column 1: date
- (b) Column 2: name of payee.
- (c) Column 3: cash withdrawn by that payee on a given date
- (d) Column 4: amount deposited in Mrs Kaur’s bank or building society account on a given date
- 30 (e) Column 5: whether the deposit was into her bank or building society account.
- (f) Column 6: any particular remarks

The total deposits equalled £13,415. The amount of each deposit was usually equal to, or less than, the cash withdrawn.

35 An extract from the document makes the interaction clear:

Date	Payee	Amount	Deposit	Account	Details
21/04/05	J Whitehead	£450			

21/04/05			£420	Nott BS	
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5 (2) Bank statements with the same account holder as the individuals listed on the summary of cash receipts (“the Bank Statements”). Each Bank Statement was redacted, leaving *en clair* only the name of the bank, the name of the account holder and a sum of money which matched the “cash withdrawn” figure for that payee on the summary of cash receipts.

(3) Letters from a Mr Jhangar Akhtar and a Mr Sajid Mahmood which state that the signatories had each loaned Mr Singh £1,000 in 2005 and 2007 respectively.

10 (4) A letter from Mr Avatar Kartar Singh stating that he had borrowed £15,000 from Mr Singh in cash in the year 1993-94.

16. Mr Singh also gave evidence under oath, led by Mr Snell. He answered questions from the Tribunal.

Mr Singh’s oral evidence

15 17. This section sets out Mr Singh’s oral evidence. For the avoidance of doubt, it does not constitute findings of fact by the Tribunal. The Tribunal’s findings of fact are set out in the following section.

18. Mr Singh was a taxi driver who owned four properties, two of which were acquired in 1994, one in 1997 and one in 1997 or 1998. In answer to questions from the Tribunal he said that his grandfather provided the deposit for the first property and he had had to borrow money to fund the other deposits.

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19. He personally collects the rent from his tenants in cash or by cheque. No payments were made to him via bank transfer or direct debit.

20. In 2006 he began trying to purchase the property in which he now lived, but the father of the vendor died and it took some time to transfer ownership. It was a private sale and he obtained legal title in 2007. In order to fund the deposit on that property he borrowed money from around 20-22 people. These borrowings took place some “8, 9 or 10” months before the purchase.

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21. Mr Singh said that the lenders withdrew amounts in cash, which they handed to him, and he deposited these sums in Mrs Kaur’s account. He used his wife’s account because he “didn’t want to mix [it with] rental income” and so “we knew what we had borrowed”. The lenders were “friends and family members”. Where the amounts withdrawn by the individuals were greater than the sums deposited in Mrs Kaur’s account, this was because Mr Singh had spent some of the money on his day to day expenditure. The money did not relate to his rental properties.

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22. In answer to questions from the Tribunal Mr Singh said:

(1) the reason why the payees lent or gave him money was because he was “quite a bit short” for his house deposit and “the Asian community generally” will all “chip in” to provide assistance, and the Sikh temple “will help people in trouble.”

5 (2) Some of the money was a gift, some was a loan. He identified the payments from Miss Rai (£200 and £250) as gifts, and also two payments each of £300 from Mr Patel. The rest he had to pay back but hadn’t had the money to do so. He initially ascribed this to “cashflow problems” and later said that he had been trying to sell one of the properties for two years so that he could repay
10 the loans, and that he had come under some pressure to make repayments.

(3) Of the amounts which were loans, none bore interest.

(4) None of the payees gave him a cheque, but this was not because he asked for cash, but rather “how they gave [the money] was up to them.”

15 23. The reason for the extensive redaction of the Bank Statements was that the payees did not want their details to be provided to HMRC. Mr Singh had had to ask the leaders of his Sikh temple to assist him in persuading the payees to provide the Bank Statements. Following that intervention, the payees did provide the Bank Statements but on condition that their addresses were not disclosed to HMRC; this was in order to protect their privacy.

20 24. The Tribunal asked Mr Singh whether all the payees were Sikh and he said no, some were not, but once the Sikhs had agreed to provide their Bank Statements, the others agreed to follow suite, on the same basis.

25 25. Mr Singh said that he had already told HMRC which of the payees were family, and which were friends. He said that Messrs Whitehead, Rawlin, Kilroy, Mohammed, Makwana, R Ahmed, A Ahmed, M Y Ahmed, Malik and Bhambra were friends, and the others were family.

The facts

26. The Tribunal makes only the following limited findings of fact.

30 27. Mr Singh worked as a taxi driver and was the landlord of at least three properties.

28. At some point before 19 January 2012, Mr Singh provided HMRC with the Bank Statements.

35 29. On 19 January and 24 February 2012, Mr Nordone of Abbeytax, Mr Singh’s agent, wrote to HMRC, refusing to provide further information relating to the Bank Statements.

30. On 9 April Mrs Spencer of HMRC sent Mr Nordone a detailed letter “in the interests of transparency”. The letter set out her reasons for requesting further

information, and stating in particular that she wanted “to cross-examine the evidence relating to the bank deposits.”

31. The Notice was issued on 25 April 2012. By letter dated 10 May 2012, Mr Nordone appealed the Notice on Mr Singh’s behalf.

5 32. By letter dated 7 June 2012, Mrs Spencer wrote to Mr Nordone, setting out the facts and reasons for the Notice. Some further correspondence ensued, and on 27 September 2012 HMRC issued the outcome of their internal review, which confirmed the decision to issue the Notice.

33. On 23 October 2012, Mr Singh appealed to the Tribunal.

10 **HMRC’s submissions**

34. HMRC’s submissions, as set out in the documents submitted to the Tribunal, are as follows.

35. In relation to the first request – for the payees’ full postal addresses – they say:

15 (1) sufficient evidence has not yet been provided to prove the Appellant’s case, namely that the payees were making loans or gifts to the Appellant;

(2) even though the amounts and dates tie in with the deposits into Mrs Kaur’s accounts, it is still reasonable for HMRC to require the full addresses of the individuals concerned.

20 36. In relation to the second request, namely details of the nature of the relationship between each payee and Mr Singh, they say that it is reasonable to ask for more details “rather than just accept all 22 [individuals] as being referred to simply as family and friends.”

25 37. HMRC also say that “the size and frequency of the payments certainly have the appearance of being, for example, likely amounts that you would expect to receive as payments of rent or bonds from tenants.”

Mr Snell’s submissions on behalf of Mr Singh

30 38. In relation to the second information requirement, Mr Snell said that it was not reasonable for HMRC to ask for the relationship between each of the payees and Mr Singh. HMRC have already been told that they are “family or friends” and the payees have also been divided between “family” and “friends”. In any event whether the payees are brothers, sisters or merely friends doesn’t assist HMRC in its purpose of “checking the taxpayer’s tax position”. He invited the Tribunal to strike out this part of the Notice.

35 39. Turning to the question of addresses, he accepted this was “more difficult”. He said that HMRC wanted Mr Singh to disclose the addresses of 22 people who “are not keen to have addresses disclosed, and when the condition under which they agreed to

provide the bank statements was that [Mr Singh] didn't disclose that information." Further, he submitted that Mr Singh had already met his burden of proof by providing the Bank Statements, and it was not reasonable of HMRC to require the addresses in addition. He said that the Notice was too wide in scope and in the nature of a fishing expedition, and the addresses of the payees "wouldn't assist any further."

40. The Tribunal put to Mr Snell HMRC's submission that there was "insufficient evidence" linking the deposits in Mrs Kaur's bank account with the cash withdrawals from the individuals' bank accounts. Mr Snell responded that it would be a "large coincidence" if the withdrawals and the receipts, which were close in time and similar in amount, were other than what Mr Singh said they were. In short, he said, Mr Singh's explanations were "credible".

41. The Tribunal asked whether it was credible for so many people to give such small amounts, spread over a more than a year, in order to assist Mr Singh to gather together a deposit for his house purchase. In particular, the Tribunal drew Mr Snell's attention to the fact that two of the withdrawals were identical in amount and there were also repeat payments from the same person. Mr Snell reiterated his submission that Mr Singh's explanation was credible, given that not everyone had money available at the same time, and that their willingness to provide the money should be understood in the context of the community of which Mr Singh was part.

20 **Discussion and decision**

42. The test which the Tribunal has to apply is whether the information required in HMRC's Notice was "reasonably required...for the purpose of checking the taxpayer's position" (Sch 36, para 1(1)).

43. Mr Singh put forward one explanation for the payments into Mrs Kaur's bank account, namely that the payees were friends or family who were lending or gifting him money in order for him to put together a deposit for a house. The Bank Statements identify, he says, certain cash amounts which were given or loaned to him and which he then paid into Mrs Kaur's bank or building society accounts.

44. Although this is a possible explanation for the deposits in the bank account, in our view it was reasonable of HMRC to seek further evidence. In particular, we note that:

(1) It is uncommon for over twenty people to contribute – over a twelve month period - to a deposit for someone else's house, particularly when that individual already has at least three properties.

(2) It is also uncommon for people to lend money without interest, and without any clarity about how or when the money will be repaid.

(3) Mr Singh's statements on repayments were not wholly consistent: initially he said that no repayments had been made because of cashflow, and then that the lenders would be repaid out of the sale proceeds of one of the properties (which suggests the issue was not simply one of cashflow).

5 (4) The leaders in Mr Singh's Sikh temple (who Mr Singh said had persuaded his Sikh friends and family to provide Bank Statements on condition that their addresses were not disclosed) neither attended the hearing nor provided witness statements, so the Tribunal had only Mr Singh's oral evidence to weigh in the balance.

(5) The withdrawals from the Bank Statements and the deposits in Mrs Kaur's account are all in cash, and so there is no explicit evidential link between the two.

10 (6) Some of the withdrawals are repeated – for instance, Mr Patel withdrew £300 on 6 June and another £300 on 13 June, exactly a week later; Mr Ali Mohammed withdrew £350 on 3 October, £440 on 17 October and £250 on 31 October. Mrs Soobia Akhtar also made three withdrawals, and several people made two. This is an unusual way of making contributions to a capital down-payment on a property.

15 (7) There is an inexact correlation between the withdrawals and the deposits. The statement that the difference between the amounts withdrawn and amounts deposited was used by Mr Singh “for day to day expenditure” is difficult to reconcile with his basic position that the payees were lending him money to provide a deposit for his house.

20 45. We thus find that it is reasonable for HMRC to seek further evidence of the link which Mr Singh says exists between these payees and the money in Mrs Kaur's accounts. HMRC's request for the full postal addresses of each of the payees is confirmed, albeit slightly varied to avoid ambiguity and provide further clarity. The varied Notice is set out at the end of this decision.

25 46. However, we agreed with Mr Snell's submissions on the second information request. Whether the individuals were friends or family does not, in our view, have any bearing on Mr Singh's tax position. The issue is whether the payments were in fact gifts or loans from these individuals to Mr Singh, because if they were not, then they may constitute taxable income in Mr Singh's hands. Mr Singh has already stated
30 that the individuals are friends or family: any further statements from Mr Singh about the nature of his stated friendship or his exact familial relationship with these individuals is not information which is “reasonably required” to check his tax position. The Notice is thus varied to exclude the second information requirement.

The Notice

35 47. Under Sch 36, para 32, the Tribunal varies the Notice issued on 25 April 2012.

48. We rephrase item 1 of the Notice so that it reads as follows:

40 **“Please provide a schedule showing the full current postal addresses of all the individuals you say provided loans and/or gifts of money to you in the period from 6/4/05 to 5/4/06. For the avoidance of doubt, you must also provide to HMRC a further copy of each and every third party bank statement already submitted by you to HMRC, with the full unredacted**

postal addresses shown clearly on every such statement and without any redaction of the information already provided.”

49. We delete item 2 of the Notice, so that Mr Singh does not have to provide information about his relationship with each of the individual payees.

5 50. Under Sch 36, para 32(4) we specify that Mr Singh must comply with the Notice as varied by the Tribunal, ie as set out in the bold text above, so as to provide this information to HMRC **no later than one calendar month from the date of issue of this decision.**

No right of appeal

10 51. Under Sch 36, para 32(5) this decision is final and there is no right of appeal.

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**ANNE REDSTON
TRIBUNAL PRESIDING MEMBER**

RELEASE DATE: 7 March 2013

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