



TC02741

Appeal number: TC/2013/2142

INCOME TAX – information notice – sch 36 FA 2008 – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR MICHAEL DEEGAN

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE PETER KEMPSTER
MRS SHAMEEM AKHTAR**

Sitting in public at Priory Courts, Birmingham on 6 June 2013

Mr Dave Parker (Parkers Accountancy & Taxation) for the Appellant

Mr Tom Eyre (HMRC Appeals Unit) for the Respondents

DECISION

- 5 1. The Appellant (“Mr Deegan”) appeals against an information notice issued by the Respondents (“HMRC”) on 25 January 2013.

Facts

- 10 2. On 15 November 2011 HMRC opened an enquiry under s 9A TMA 1970 into Mr Deegan’s self-assessment tax return for the year 2009-10. Documents and information were provided, some in response to formal information notices; there was at least one meeting; there was correspondence between HMRC and Mr Deegan’s accountants.

3. On 5 December 2012 HMRC wrote asking various questions and seeking various documents and information, and saying:

15 “Please let me have a reply to this letter by 18 January 2013. I am concerned at the length of time taken to progress this enquiry. If for any reason you are unable to reply within the proposed timescale then please contact me accordingly.”

4. On 10 January 2013 the accountants acknowledged that letter and stated:

20 “... due to SA deadlines due on 31st January 2013 it will not be possible to reply to your letter until early February.”

5. On 25 January 2013 HMRC issued another formal information notice (“the Notice”), requesting details concerning various motorcycle sales (one of the matters contained in the 5 December letter), with a compliance deadline of 30 days after receipt of the Notice.

- 25 6. On 14 February 2013 the accountants appealed to HMRC against the Notice and asked for the matter to be listed for the Tribunal. On 26 February HMRC replied giving their justification for the Notice and confirming the appeal rights to the Tribunal. The Notice of Appeal was sent to the Tribunal on 18 March 2013, stating that HMRC were being wholly unreasonable, and the Notice should be cancelled and
30 an apology issued.

Law

7. Schedule 36 Finance Act 2008 provides (so far as relevant):

35 “1 (1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)—
(a) to provide information, or
(b) to produce a document,
if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

- (2) In this Schedule, “taxpayer notice” means a notice under this paragraph.
- ...
- 5 6 (1) In this Schedule, “information notice” means a notice under paragraph 1, 2, 5 or 5A.
- (2) An information notice may specify or describe the information or documents to be provided or produced.
- ...
- 10 7 (1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
- (a) within such period, and
- (b) at such time, by such means and in such form (if any),
- as is reasonably specified or described in the notice.
- ...
- 15 29 (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal against the notice or any requirement in the notice.
- ...
- 20 32 (1) Notice of an appeal under this Part of this Schedule must be given—
- (a) in writing,
- (b) before the end of the period of 30 days beginning with the date on which the information notice is given, and
- (c) to the officer of Revenue and Customs by whom the information notice was given.
- 25 (2) Notice of an appeal under this Part of this Schedule must state the grounds of appeal.
- (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,
- 30 (b) vary the information notice or such a requirement, or
- (c) set aside the information notice or such a requirement.
- (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—
- 35 (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.

(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.

5 (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.”

Mr Deegan’s Case

8. Mr Parker for Mr Deegan submitted as follows.

10 (1) HMRC’s conduct was wholly unreasonable. A point of principle was involved. HMRC routinely issue information notices during enquiries to put
15 pressure on taxpayers and their agents, but HMRC themselves do not answer queries. It was a hideous organisation and Mr Parker’s firm had made 17 formal complaints to HMRC in May alone concerning unanswered
15 correspondence. It was disappointing that the Inspector who raised the Notice had not attended the hearing to explain his actions or answer questions.

(2) It was accepted that the details requested by the Notice were relevant to the enquiry but the Notice had been issued too soon. The 5 December letter requesting the information had not been ignored; a reply had been sent on 10
20 January asking for more time because of the January self-assessment compliance rush. It was unnecessary and unreasonable to have then issued the Notice on 25 January. Any earlier delays were due to workload of the accountants and also Mr Deegan’s business commitments.

(3) The material demanded by the Notice had been compiled and was ready to
25 submit, but had not yet been sent while this appeal was pending. The Notice should be withdrawn

HMRC’s Case

9. Mr Eyre for HMRC submitted as follows.

30 (1) During the enquiry there had been a history of delays in supplying information. It had been necessary to issue formal notices earlier in the enquiry. The Inspector was required to obtain the consent of his manager before issuing the Notice, and they had both felt it was justified.

(2) The accountants had said the information could be produced in February, after the January busy period. The compliance date of 28 February in the
35 Notice was to allow for that situation.

(3) From the case file it appeared that there was no delay longer than one month on the part of HMRC in dealing with correspondence.

Consideration and Conclusion

40 10. The Appellant accepted that the information and documents stipulated in the Notice were relevant to the enquiry. The real dispute concerned whether HMRC were

5 too quick to issue a formal notice when the accountants had assured HMRC that they would deal with the matter after the January rush. However, the terms of the Notice did accommodate that timing – compliance was required by the end of February. The Inspector decided to issue a formal notice because of previous delays in the course of the enquiry. While Mr Deegan and his accountants may consider that HMRC need not have issued the Notice, there are no grounds for varying the terms of the Notice, other than the deadline for its compliance.

11. The only variation we make to the Notice is to extend the deadline for compliance to 19 July 2013.

10 **Decision**

12. The appeal is **ALLOWED IN PART** so as to extend the deadline for compliance to 19 July 2013.

15 13. This document contains full findings of fact and reasons for the decision. As provided by para 32(5) sch 36 FA 2008, this decision is **final** (so that neither party has any right to apply for permission to appeal against it).

20 **PETER KEMPSTER**
TRIBUNAL JUDGE

RELEASE DATE: 7 June 2013