



TC02756

Appeals numbers: TC/2010/940, TC/2010/961 & TC/2012/3042

*INCOME TAX – application to admit a late appeal – granted – appeal
against information notices – s 19A TMA 1970 – appeal allowed in part –
consequent case management directions*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MR IVAN PHILLIPS
MRS PATRICIA PHILLIPS
IVAN & PATRICIA PHILLIPS (a firm)**

Appellants

- and -

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

Respondents

**TRIBUNAL: JUDGE PETER KEMPSTER
MARK BUFFERY**

Sitting in public at Guildford on 11 March 2013

Mr Ivan Phillips for the Appellants

Mr Philip Shepherd (HMRC Appeals Unit) for the Respondents

DECISION

1. There were two matters before the Tribunal at the hearing:

5 (1) An application by the Third Appellant for admission of a late appeal against assessments for the tax years 2004-05 and 2005-06 (*File number TC/2012/3042*)

10 (2) Appeals by the First and Second Appellants against the Information Notices issued by HMRC on 29 January 2009 (*Files numbers TC/2010/940 & 961*)

The Late Appeal Application

2. The notice of appeal was sent to the Tribunal on 10 February 2012 appealing against a decision contained in an HMRC letter dated 23 February 2010 (“the Decision Letter”).

15 3. Mr Shepherd confirmed that HMRC objected to the late appeal application, and pointed out that the Tribunal itself had in a letter to the Appellants dated 28 July 2010 (in relation to Files numbers TC/2010/940 & 961) warned them that the Tribunal had no record of any appeal against assessments for the tax years 2004-05 and 2005-06. The Appellants had still taken no action for well over a year.

20 4. In response to questions from the Tribunal Mr Shepherd agreed that the relevant correspondence contained some procedural irregularities, in that the Decision Letter did not advise the recipients of their appeal rights against the decision, nor offer a formal internal review of the decision.

25 5. *Decision on the Late Appeal Application* - Having considered the correspondence between the parties available to the Tribunal, especially the absence from the Decision Letter of information concerning appeal procedures or right to request a formal internal review, the Tribunal decided that it would be in the interests of fairness and justice to allow the appeal to be admitted out-of-time and thus this Application is GRANTED.

30 6. *Case Management Direction* – At the hearing the Tribunal DIRECTED that HMRC should prepare and serve their statement of case in the normal manner, no later than 31 May 2013.

The Information Notice Appeals

The Appellants’ Case

35 7. Mr Phillips submitted that the information notices were just one incident in a “war” going back many years being waged by HMRC in connection with a company, Castle Finance Limited (“Castle”), ultimately owned by Mr Phillips and his family. Eventually, all assessments issued against Castle had been withdrawn by HMRC.

HMRC had now turned its guns against Mr & Mrs Phillips in a further attempt to extract money. Castle had been a deposit-taking institution and then a registered bank, and then had been very successful commercially until the property crash. There were several millions of pounds of carried forward losses. The current dispute concerned tax deductions for interest paid on monies borrowed by Mr & Mrs Phillips to fund a property lettings business carried on by Mr & Mrs Phillips (“the Lettings Business”). HMRC were maintaining that interest was, at least in part, not deductible from income from the Lettings Business. That was incorrect because it was HMRC’s own practice that if money was withdrawn from a business (for whatever purpose, even the purchase of luxury items) then the proprietor was still entitled to deduct interest incurred on replacement capital.

8. Information notices had first been issued on 14 January 2009. There was a meeting with HMRC on 27 January. On 29 January new notices were issued. The notices should not be upheld because:

- (1) HMRC were not entitled to raise a second set of notices, and were estopped from so doing.
- (2) Alternatively, the requirements of the notices were onerous. Adequate information had already been provided to HMRC and the officer leading the enquiry, Mr Plummer, had verbally accepted the explanations given by the Appellants.
- (3) Alternatively, the notices were issued out of spite and contrary to HMRC’s own internal guidance.

HMRC’s Case

9. Mr Shepherd submitted that the relevant notices were those issued on 29 January 2009. They had been issued because of representations made at the meeting on 27 January and were of reduced extent from the earlier notices, because HMRC had accepted some of the representations made at the meeting and accordingly cut the scope of the earlier notices.

10. The notices sought both (a) information required and (b) documents required. All of the information and documents listed in the notices was reasonably required by HMRC in connection with the matters under investigation. Until HMRC had the requested information they could not form a view on the Appellants’ contention concerning the deductibility of the interest in dispute. The documents requested were necessary because HMRC had to date not seen any bank statements separating business from personal finance.

Relevant Law

11. The appeals are governed by s 19A Taxes Management Act 1970 which provides:

“19A Power to call for documents for purposes of certain enquiries

- (1) This section applies where an officer of the Board gives notice of enquiry under section 9A(1) or 12AC(1) of this Act to a person (“the taxpayer”).
- 5 (2) For the purpose of the enquiry, the officer may at the same or any subsequent time by notice in writing require the taxpayer, within such time (which shall not be less than 30 days) as may be specified in the notice—
- (a) to produce to the officer such documents as are in the taxpayer's possession or power and as the officer may reasonably require for the purpose of determining whether and, if so, the extent to which —
- 10 (i) the return is incorrect or incomplete, or
- (ii) in the case of an enquiry which is limited under section 9A(5) or 12AC(5) of this Act, the amendment to which the enquiry relates is incorrect, and
- 15 (b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.
- (2A) The officer of the Board may also (whether or not he imposes a requirement under subsection (2) above), by a notice in writing, require the taxpayer, within such time (which shall not be less than 30 days) as may be specified in the notice—
- 20 (a) to produce to the officer such documents as are in the taxpayer's possession or power and as the officer may reasonably require for the purpose of making a determination for the purposes of section 9D(1)(c) or 12AE(1)(c) of this Act, and
- 25 (b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.
- (3) To comply with a notice under subsection (2) or (2A) above, copies of documents may be produced instead of originals; but—
- (a) the copies must be photographic or otherwise by way of facsimile; and
- 30 (b) if so required by a notice in writing given by the officer, in the case of any document specified in the notice, the original must be produced for inspection by him within such time (which shall not be less than 30 days) as may be specified in the notice.
- 35 (4) The officer may take copies of, or make extracts from, any document produced to him under subsection (2), (2A) or 4 (3) above.
- (5) A notice under subsection (2) or (2A)]3 above does not oblige the taxpayer to produce documents or furnish accounts or particulars relating to the conduct of —
- 40 (a) any pending appeal by him, or
- (b) any pending referral to the tribunal under section 28ZA of this Act to which he is a party.

(6) An appeal may be brought against any requirement imposed by a notice under subsection (2) above to produce any document or to furnish any accounts or particulars.

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(7) An appeal under subsection (6) above must be brought within the period of 30 days beginning with the date on which the notice under subsection (2) or (2A) above is given.

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(8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.

(9) On an appeal under subsection (6) above section 50(6) to (8) of this Act shall not apply but the tribunal may—

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(a) if it appears that the production of the document or the furnishing of the accounts or particulars was reasonably required by the officer of the Board for the purpose mentioned in subsection (2) or (2A) above, confirm the notice under that subsection so far as relating to the requirement; or

(b) if it does not so appear, set aside that notice so far as so relating.

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(10) Where, on an appeal under subsection (6) above, the tribunal confirms the notice under subsection (2) or (2A) above so far as relating to any requirement, the notice shall have effect in relation to that requirement as if it had specified 30 days beginning with the determination of the appeal.

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(11) The determination of the tribunal of an appeal under subsection (6) above shall be final and conclusive (notwithstanding the provisions of sections 11 and 13 of the TCEA 2007).

(12) Where this section applies by virtue of a notice given under section 12AC(1) of this Act, any reference in this section to the taxpayer includes a reference to any predecessor or successor of his.”

30 *Consideration and Conclusions*

12. The Tribunal is aware of the technical point concerning deductibility of interest incurred on borrowed replacement capital but the information requested by HMRC was required to put HMRC in the position to be able to be satisfied that there had been replacement capital in this case. Mr Phillips’ objection to the information request was based on an assumption that he had already proved his point concerning the replacement capital, whereas in fact the information was required by HMRC to satisfy themselves on that very point. We consider the information set out in the first part of the notices is reasonably required by HMRC.

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13. Turning to the documents required by the notices, these relate to bank statements and statements of money market transactions. The Letting Business is run through a bank account that also includes items of personal expenditure. At the hearing there was an initial misunderstanding between Mr Phillips and the Tribunal on this point, but Mr Phillips clarified that the bank account 71135007 (referred to in the notices) has contained comingled private and business monies. We consider that

5 details of the transactions in that bank account are reasonably required by HMRC, as they relate at least in part to transactions of the Letting Business. However, we are not persuaded that the other documents requested by the notices are likely to provide vital information to HMRC in connection with their investigation, and we consider that on balance it would be unduly onerous to require the Appellants to provide those other documents. Accordingly we will remove those other documents from the requirements of the notices.

Decision on the Information Notice Appeals

10 14. The Appeals are ALLOWED IN PART. The Information Required as stated in the schedules to the two information notices was reasonably required by HMRC and we confirm that part of the notices. However, the Documents Required as stated in the schedules to the two information notices were reasonably required by HMRC only so far as stated in paragraph 1(i) thereof and the documents described in paragraphs 1(ii), 2 & 3 thereof were not so required; accordingly paragraph 1(i) thereof is confirmed but paragraphs 1(ii), 2 & 3 thereof are set aside.

15 15. The **effect** of the above is that in both notices the Information Required remains as stated but the Documents Required are deleted and replaced with the following: “Bank statements relating to your current account numbered 71135007 for the period 4 March 2002 to 21 March 2007.”

20 16. As stated to the Appellants at the hearing, the Tribunal extends the deadline for compliance with the amended information notices to 31 May 2013.

Appeal Rights relating to both the Late Appeal Application and the Information Notice Appeals

25 17. This document contains full findings of fact and reasons for the decision and replaces the summary decision notice issued to the parties on 27 March 2013. 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
30 “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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**PETER KEMPSTER
TRIBUNAL JUDGE**

RELEASE DATE: 19 June 2013