



TC02991

Appeal number: TC/2013/00055

INFORMATION NOTICE – conditions and reasonableness – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

N J COWAN

Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD BARLOW
 SUSAN STOTT FCA**

Sitting in public at Leeds on 26 September 2013

**Mr David Southern instructed by Brown Butler chartered accountants for the
Appellant**

Mr Hall presenting officer for the Respondents

DECISION

5 1. This is an appeal against the respondents' notice dated 6 July 2012 issued under Schedule 36 of the Finance Act 2008 by which they required the appellant to provide information listed in a schedule attached to the notice. The decision was confirmed on review on 22 November 2012 but the schedule of information we are requested to confirm is now in an amended form requiring less than had been initially required.

2. The relevant statutory provisions are as follows.

10 3. The power to require information is set out in paragraph 1 of schedule 36 in terms that an officer may give notice in writing requiring the taxpayer to provide information or produce a document "if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position". Such a notice is called a "taxpayer notice". By paragraph 58 "checking" includes carrying
15 out an investigation or enquiry of any kind. By reason of paragraph 64 "tax position" means "the person's position as regards any tax, including the person's position as regards ... past present or future liability to pay any tax ... and claims ... that may be made ... in connection with the person's liability to pay any tax".

20 4. In principle, by reason of paragraph 21, a notice cannot be given for the purpose of checking a person's position concerning income tax or capital gains tax where that person has made a tax return. That provision is however dis-applied by paragraph 21(2) if one or more of four conditions apply.

5. Conditions A and B are relevant in this case.

25 6. Mr Southern agreed that condition A is satisfied namely that a notice or enquiry had been given in respect of a return and in respect of a claim to non-resident status made by the taxpayer.

7. The respondents also contend that Condition B had been satisfied in that an officer had reason to suspect that relief from a relevant tax given for the chargeable period may be or have become excessive.

30 8. As it is sufficient for only one of the Conditions to be satisfied Mr Southern's concession makes it unnecessary for us to decide whether Condition B is satisfied as well as Condition A.

35 9. Mr Southern contended that a notice would serve no useful purpose because the periods for which the respondents believe there may have been an under-declaration of capital gains tax are no longer amenable to assessment because they are more than six years ago.

10. Mr Hall countered that by saying that there are circumstances in which an assessment can be made more than six years after the end of the year in question, which is undoubtedly the case. However, Mr Southern said that as no allegations

have been made that would justify a contention that those circumstances have arisen the respondents are simply using that argument as an excuse to embark on what, at best, is a so called fishing expedition. Mr Hall nevertheless contended that it is premature to refuse the application on the basis that the respondents are not in a position to state exactly what the circumstances are as it is the purpose of such a notice to find out what the facts are.

11. In order for such a notice to be reasonably required for the purpose of checking a taxpayer's liability to pay any tax or a claim made by a taxpayer then the respondents must have some reasonable basis for contending that there is at least a possibility that tax has been under-declared or an incorrect claim has been made.

12. We hold that there is such a reasonable basis.

13. The fundamental issue that the respondents say they need to check is the residence status of the appellant. The appellant claims to have been resident in Guernsey for tax purposes at all material times though he had undoubtedly previously been resident in the UK for tax purposes in earlier periods.

14. The basis on which the respondents claim to be entitled to seek information is that residence for tax purposes is not necessarily a straightforward matter and depends in part on the taxpayer's personal circumstances over a period of time and not, in this case at least, purely on an absence from the UK throughout the tax years in question because the taxpayer has admitted that he has spent a significant number of days in the UK in each of the relevant years including those which are still within time for assessment on any view.

15. We note that in the tax year 2010/11 the appellant's tax return shows that he spent 111 days in the UK having visited the UK on 16 occasions and of those 111 days only 25 are claimed as being attributed to exceptional circumstances. There is also some evidence that the appellant may still own residential accommodation in the UK.

16. The respondents are therefore entitled to enquire about those more recent years and in doing so the appellant's affairs over a longer period of time may be relevant even if some of that period lies outside the period for which assessments could be issued under the normal rules.

17. What the respondents may be able to do with the information when they have it, that is to say whether their action would have to be limited only to more recent years, is not a matter on which we can make any decision but nor do we hold that to be a bar to the information being required as it does serve the purpose of enquiry into the later years.

18. We therefore hold that the information can be sought and the notice is upheld. The appeal is dismissed in principle.

19. As far as concerns the amended schedule of information that is now required we have considered it and hold that it is reasonable to require it in the form there set out.

5 Mr Southern contended in particular that the request for details about days in and out of the UK over a long period is too onerous to be reasonable but in principle that is relevant information and as the appellant has included details of the precise numbers of days in his tax returns it is clear that he already has that information and that it can therefore be submitted to the respondents without difficulty.

10 20. 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.

15 **RICHARD BARLOW**
TRIBUNAL JUDGE

RELEASE DATE: 22 October 2013

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