



TC04010

Appeal number: TC/2014/02164

INCOME TAX – taxpayer notice.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CARMEL JORDAN

Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD BARLOW
 MR LESLIE BROWN**

Sitting in public at Leeds on 15 August 2014.

Dr R A Milton of Milton & Co for the Appellant

Mr A Hall of HM Revenue and Customs, for the Respondents

DECISION

5 1. The appellant is in business as a taxi driver and she appeals against a review decision communicated to her in a letter dated 4 April 2014 by which the respondents decided a notice (referred to in the legislation as a taxpayer notice) dated 16 January 2014 had been properly issued under paragraph 1 of Schedule 36 to the Finance Act 2008 (the Act). That notice required the appellant to provide, by 16 February 2014, information and to produce documents specified in the notice.

10 2. Paragraph 1 of Schedule 36 of the Act entitles an officer to require a person to provide information or 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”.

3. Paragraph 64 of Schedule 36 defines “tax position” as:

15 “the person’s position as regards any tax, including the person’s position as regards –

(a) past, present and future liability to pay any tax ...”.

4. “Checking” in this context is defined by paragraph 58 as including the carrying out of an investigation or enquiry of any kind.

20 5. By paragraph 29 of Schedule 36 there is a right of appeal against a notice or any requirement of a notice but that right of appeal is limited in that there is no right of appeal in respect of a requirement to give information or produce documents “that [form] part of the taxpayer’s statutory records”.

25 6. “Statutory records” are defined in paragraph 62 of Schedule 36 for the purposes of that schedule as follows:

“... information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of-

(a) the Taxes Acts, or

30 (b) any other enactment relating to a tax ...

[subject to certain exceptions not relevant to this case]”.

7. The respondents rely on section 12B(3)(a) of the Taxes Management Act to establish which records they say should have been kept. It reads, so far as is relevant to this appeal:

35 “(3) In the case of a person carrying on a trade, profession or business alone or in partnership-

(a) the records required to be kept and preserved under subsection (1) or (2A) above shall include records of the following, namely-

5 (i) all amounts received and expended in the course of the trade, profession or business and the matters in respect of which the receipts and expenditure take place,”.

8. The effect of the above provisions can be summarised in the following propositions:

- 10 • Any information or documents the Commissioners require to be provided or produced must be reasonably required for the purpose of checking the appellant’s tax position.
- The information or documents must be required for the purpose of carrying out an investigation or enquiry of some kind.
- 15 • If the information or documents are part of the taxpayer’s statutory records there is no appeal against the notice or the requirements contained in it.
- The statutory records are not precisely prescribed but are defined, so far as documents are concerned, as those necessary to record all amounts received and expended and the matters in respect of which the receipts and expenditure took place. In other words it is up to the taxpayer exactly how he records the amounts received and expended etc but he must in fact record, in some form, all amounts and the matters to which they relate.
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9. Dr Milton claimed that the request for information in the notice had been made in order to enforce a “business records check” and in fact the notice had been issued because the appellant had not co-operated to the respondents’ satisfaction when they proposed a business records check. Dr Milton asserted that there is no statutory basis for a business records check. We agree that there is no statute that requires a taxpayer to co-operate with such a check but that does not make it illegal for HMRC to propose one. Their general powers of care and management entitle them to do what they consider necessary for the better operation of the tax system. On the other hand as there is no statutory basis for such a check the taxpayer is entitled to refuse to be involved in it.

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10. Dr Milton also asserted that HMRC use the business records checks as a means of identifying possible candidates for fuller enquiries and that their motives for carrying out such checks are not, as they claim, to assist taxpayers to keep better records. Mr Hall denied that was the case. We are not in a position to judge whether HMRC have any ulterior motive in carrying out business record checks but even if we assume Dr Milton is right we have no power to stop them using them for that purpose.

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11. Dr Milton’s argument was that that ulterior motive made the subsequent notice to produce documents and information unreasonable which would therefore entitle the

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appellant to challenge the notice. Without proof that that was an ulterior motive we cannot hold that it was unreasonable for HMRC to issue a notice on the mere assertion by the appellant that there was an ulterior motive for the prior issue of the invitation to be involved in a business records check. We would add that it would by
5 no means be certain that such an ulterior motive for requesting the business records check would in fact invalidate a subsequent notice even if that ulterior motive were to be proved.

12. If HMRC have reason to doubt the accuracy of a taxpayer's records it seems reasonable that they should ask to see those records even if their doubt arose from
10 some other exercise carried out for some undeclared motive. Had HMRC purported to say they could insist on a reply to the business records check when they have no such power it might well then have been unreasonable to use that as a reason for demanding information and records but that is not what happened.

13. Dr Milton also argued that his client had in fact given all the information now
15 sought under the notice when she spoke on the telephone to an officer about the business records check. We do not agree. The telephone call could not have dealt with "all amounts received and expended" which is the wording of section 12B(3)(a) of the Taxes Management Act. That wording clearly requires records to be kept in whatever form the taxpayer decides but relating to each separate transaction.

14. We also reject the suggestion by Dr Milton that the single figures included in
20 the taxpayer's tax return would satisfy that requirement though, as the period for which the notice has required the records to be produced (15 September 2013 to 15 January 2014) was one for which no return had been made by the time the notice was issued, that argument is in any event irrelevant.

15. We therefore hold that the notice was in principle valid. We need to consider
25 which if any of the items requested were for statutory records and for those items no appeal lies and then for any remaining items we need to consider if the request was reasonable.

16. The first section of the notice refers to the statutory records. It refers to "a
30 record of all sales and takings" and "a record of all purchases and expenses". Those are clearly items falling within the phrase "all amounts received and expended in the course of trade ... etc" and are therefore a reference to statutory records. The fact that the notice then goes on to give "examples" of what is required does not invalidate the demand as, by making it clear these are only examples, it leaves it open to the
35 taxpayer to keep her records in whatever form she chooses provided it achieves the object of identifying all amounts ... etc.

17. The notice then adds "a record of the business costs of any asset that is used for
40 both business and private use i.e. motor vehicles and mobile phones". Clearly such records also fall within the "all amounts expended" heading and although by saying "i.e." the demand is un-necessarily restricted, as it appears to exclude other possible items; that does not invalidate what is demanded.

18. There follow 13 specific requests for “other documents or information that we need” and clearly by referring to these as “other” which can only mean other than the statutory records these items must be outside the definition of statutory records. These items are therefore within the jurisdiction of the tribunal as an appeal is possible in respect of them.

19. The first request is that the appellant should confirm that she is continuing to receive income as a sole trader from taxi/private hire. This is a reasonable request for information on any view of what is reasonable.

20. Several other items duplicate items covered by the statutory records and we hold that it is unreasonable to demand these as other documents and information as well as demanding the statutory records but that does not mean they need not be produced as statutory records. The items we find to be unreasonable on this ground are:

- Do you rent the vehicle or just pay rent for the radio?
- Do you receive a receipts for rents paid?
- How are takings recorded?
- How are your purchases recorded?

21. In addition, the question “What do you do with the monies at the end of the working day?” is unreasonable. The relevant issue is what the takings are not what Ms Jordan does with them.

22. Otherwise we find that the demands are reasonable and except as mentioned in paragraphs 20 and 21 the appeal is dismissed though we repeat that the records unreasonably demanded and referred to in paragraph 20 as duplicates are still to be produced as statutory records.

23. 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.

**RICHARD BARLOW
TRIBUNAL JUDGE**

RELEASE DATE: 15 September 2014