



**TC05290**

**Appeal number: TC/2016/02557**

*Information Notice – Whether documents reasonably required for the purposes of checking the taxpayer’s tax position – Finance Act 2008, Schedule 36 paragraph 1 – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ALLAN RANKIN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JENNIFER DEAN**

**Sitting in public at North Shields on 20 July 2016**

**Mr Leslie, Director of Tax Networks Ltd, for the Appellant**

**Ms Browne, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### Introduction

5 1. By Notice of Appeal dated 5 May 2016 the Appellant appealed against a taxpayer information notice issued by HMRC on 17 March 2016 under paragraph 1 of Schedule 36 to the Finance Act 2008. HMRC confirmed at the hearing that no objection was taken to the late receipt of the appeal.

### Legislation

2. Paragraph 1 of Schedule 36 to the Finance Act 2008 provides that:

10 *(1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)–*

*(a) to provide information, or*

15 *(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.*

20 *(2) In this Schedule, “taxpayer notice” means a notice under this paragraph.*

3. Paragraph 6 of Schedule 36 provides that:

25 *(1) In this Schedule, “information notice” means a notice under paragraph 1 ...*

4. Paragraph 29 of Schedule 36 relevantly provides that:

30 *(1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal against the notice or any requirement in the notice. ...*

5. Paragraph 32(5) of Schedule 36 provides that:

35 *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.*

### Factual background and information required

6. I was provided with a significant amount of correspondence between the parties which related to the enquiry relevant to this appeal and earlier enquiries. I do not

intend to set out in unnecessary detail the discussions and disagreements between the parties. The following is intended as an overview of the facts relevant to the issue before me.

7. By letter dated 14 December 2015 HMRC notified the Appellant of its intention to open an enquiry into the Self-Assessment tax return for the year ended 5 April 2014 under Section 9A TMA 1970.

8. Mr Leslie summarised in correspondence to HMRC dated 20 December 2015 the investigations by HMRC to date:

*“1. IR Specialist Investigations/SCO Enquiries were settled to HMRC’s satisfaction;*

*2. In 2008 a tax investigation into Metro Industrial Holdings Ltd for years ended 31<sup>st</sup> December 2006 to 2008 which mainly focussed on various loans to Leftbank Developments together with my client’s loans. A relatively immaterial settlement was satisfactorily concluded in about June 2010.*

*3. HMRC then enquired into my client’s ITSA 2012, 2013 Returns; and,*

*4. In December 2015 the ITSA 2014 Return.*

*It is undeniable that HMRC has established that my client is wealthy and his returns were compliant...*

*On 10<sup>th</sup> and 21<sup>st</sup> August 2015 HMRC closed down both ITSA Enquiries (2012 and 2103) without amendments because my client’s original Returns were correct.”*

9. HMRC responded by letter dated 17 February 2015 in which the Appellant’s concerns about a “fishing expedition” were briefly addressed together with the enquiry carried out by Special Investigations. HMRC went on to explain that:

*“...I think we have legitimate questions about your client’s business interests and where he has invested his considerable capital. I agree that this is only of concern if there are tax consequences, however, I need to have comfort that there are no tax consequences.*

*In your letter of 17 June 2014 you referred to your client not investing in interest bearing bank accounts and drew down money (or recalled loans) invested elsewhere. This is a reasonable explanation however I cannot see any commercial reason for investments if they will not realise any income, i.e. loan interest...*

*I note that you have stated that the assets your client received from Metro Industrial Holdings Ltd following the liquidation was in the form of loans; the liquidation report filed at Companies House shows that the loans were broken down as follows:*

<i>Directors Loan Account</i>	<i>£3,516,387</i>
<i>Loan to Bloomsbury Ltd</i>	<i>£6,515,508</i>

Loan to Woolsington Bridge Nurseries £70,000

Loan to Leftbank Development £316,573

5 Can you please advise what the terms of the loans to third parties were – was he entitled to any interest on these loans. Would you also advise the address of Bloomsbury Ltd as there are a number of companies with this name.

10 Another point of concern is your client’s connection to the Lugano Group. He is a director of the UK company Lugano Developments Ltd but the company is owned by the Guernsey company Lugano Group Ltd. It is within our remit to investigate connections to offshore structures and the possibility that individuals may have alienated income and gains by transferring cash or assets to offshore entities.”

15 10. The Appellant’s position was that HMRC, having received the Appellant’s response dated 15 December 2015 and information regarding his means, was pursuing an alternative route by requesting information about a theoretical return on investment, the terms of the Metro Industrial Holdings Ltd loans and an offshore group. It appeared to the Appellant to be a fishing expedition with which the Appellant was not prepared to co-operate.

20 11. HMRC acknowledged the enquiry conducted by Special Investigations did not address concerns about the loans or any offshore interests but stated that HMRC was not, as a result, precluded from making such enquiries now. In a letter dated 16 March 2016 HMRC stated:

“You refer to HMRC providing evidence in support of our speculative concerns. The evidence you refer to is:

25 • The Metro Industrial Holdings liquidation documents filed at Companies House which shows that substantial loans were assigned to Mr Rankin – this is sufficient evidence to show that investments have been made which could be income producing. It is not unreasonable for HMRC to ask about the terms of these loans.

30 • The accounts filed at Companies House for the UK company, Lugano Developments Ltd, which show that the company is wholly owned by a Guernsey company, Lugano Group Ltd. Your client is a director of the UK company and it is reasonable for HMRC to ask of he has any connection to the ownership of the offshore company or has transferred any assets into the offshore company...

35 ...I do not have any information about the Lugano Group ownership structure so at present I am considering the Transfer of Assets Abroad legislation...”

12. The Appellant appealed against the information notice. Following a review, HMRC upheld its decision that the documents were reasonably required, reiterating the points set out in [13] above.

13. The schedule of documents specified in the Notice are as follows:

- 5 (i) *Copies of loan agreements for the loans to Bloomsbury Ltd, Woolsington Bridge Nurseries and Leftbank Development Ltd. If there are no written agreements please let me know the agreed terms and conditions of the loans, supported by underlying paperwork such as director's meeting notes etc;*
- (ii) *The full address of the company Bloomsbury Ltd;*
- (iii) *If you are a director of Lugano Group;*
- 10 (iv) *If you have any connection to the ownership of Lugano Group, either directly or indirectly, i.e. via trusts or nominees;*
- (v) *If you have transferred any cash or assets to the company, including loans, or have a contract to provide services to the company; if so, I require an analysis of the assets transferred;*
- 15 (vi) *If you have the power to enjoy the income or gains of Lugano Group in any way, either through share ownership or being the beneficiary of a trust etc.*

### **Submissions**

#### HMRC's case

14. On behalf of HMRC Ms Browne made the following submissions:

- 20 (i) *Copies of loan agreements for the loans to Bloomsbury Ltd, Woolsington Bridge Nurseries and Leftbank Development Ltd. If there are no written agreements please let me know the agreed terms and conditions of the loans, supported by underlying paperwork such as director's meeting notes etc;*

25 15. The Appellant has had loans to the three entities (Bloomsbury Ltd, Woolsington Bridge Nurseries and Leftbank Development Ltd) assigned to him following the dissolution of Metro Industrial Holdings Ltd. Ms Browne noted that the sums involved are substantial and it is not unreasonable for HMRC to seek to consider the terms under which the loans operate as commercial loans usually give rise to a return of some description. Any such return could give rise to taxable income and therefore  
30 the loan agreements are reasonably required to check the Appellant's tax position.

16. Ms Browne explained that the loans have also been assigned to the Appellant from a company as part of the winding up. That change in the economic environment since the initial granting of the loans could mean that the original terms have been superseded by new terms and conditions.

35 17. HMRC has previously looked into the loans; the first time they were considered was prior to 2010 and in the context of enquiries into a CT return. Ms Browne

explained that HMRC are unable to locate these papers. On behalf of HMRC Ms Browne submitted that legislation changes and rules relating to CT are not identical to those relating to income tax and therefore it is reasonable for HMRC to reconsider the loans as part of the current enquiry.

- 5 18. Relying on *Whitefields Golf Club Ltd, Whitefields Golf Ltd & Draycote Hotels Lyd and The Commissioners for HM Revenue and Customs* [2014] UKFTT 458 (TC) Ms Browne highlighted a second request for documents in circumstances where they have been lost or destroyed does not render the second request unreasonable:

10 *“17. The Appellant argues that it would not be reasonable to require delivery of the documents and information in a situation where (a) it has already been supplied once and (b) HMRC (and HMCE before it) have quite clearly been dilatory in following up that information, as well as losing or destroying it. Whilst this might be a valid reason for some embarrassment on HMRC’s part, we do not consider it is sufficient reason to allow the appeal in full. The matters the Appellants complain of are*  
15 *effectively matters of good administration and they are seeking to persuade us that the Tribunal can effectively assume a general quasi-judicial review power through the back door of a finding that the relevant documents and information are not “reasonably required”.*

20 *18. To the extent that such a jurisdiction exists, it is certainly not to be found in the Tribunal. As a creature of statute, the Tribunal has only the powers conferred on it by statute. In considering whether information or a document being sought by HMRC is “reasonably required”, the Tribunal cannot embark upon a general supervisory review of the conduct of HMRC, it must simply decide what is “reasonably required” for the purposes of establishing the correct tax liability of the taxpayer(s) in question*  
25 *in accordance with the law. Whilst the Appellants may be able to raise judicial review type arguments as to why strict tax liabilities should not be enforced in the circumstances of their particular case, that is only part of the overall picture (and, incidentally, is not a part of the picture over which this Tribunal has any jurisdiction). The fact of the matter is that the documents which HMRC are seeking to*  
30 *obtain are clearly relevant as part of the overall picture in establishing the Appellants’ proper VAT liabilities and should therefore be provided, notwithstanding the unfortunate history. To order otherwise would either be entirely pointless (on the basis that production of the documents would in any event be ordered in the context of a substantive appeal) or would be tantamount to hamstringing permanently all efforts*  
35 *on the part of HMRC to ensure that the Appellants’ VAT affairs are properly in order (and are not, for example, providing them with an ongoing unfair competitive advantage over other traders in a similar position) – which would be completely inappropriate.”*

40 (ii) The full address of the company Bloomsbury Ltd

19. Ms Browne explained that HMRC has been unable to identify this company with any certainty. One company of this name has been identified in Guernsey with connections to the Lugano group, however “Bloomsbury” features in the names of

many other companies. HMRC submit that this information is reasonably required to enable HMRC to consider the taxable position of this loan further.

(iii) If you are a director of Lugano Group

5 20. The Lugano parent group is in Guernsey. Publicly available information indicates that the company is directly owned by two nominee companies and therefore the ultimate ownership of the group is not transparent.

21. The Appellant's return stated:

10 *"I am a director of the following companies, but receive no remuneration or benefits from any of them Lugano Developments Limited, Woolsington Bridge Nurseries Limited, Metro Industrial Holdings Limited, Boxpipe Limited, Tandem Bars Limited, Birney Hall Properties Limited, North British Capital Limited, Boxpipe Limited, Shareappeal Limited."*

15 22. The accounts for Lugano Developments Ltd show that the company owed the Appellant £638,741 in 2012, £859,335 in 2013 and £694,502 in 2014. The accounts indicate that no interest is being charged on the loans and no interest is being returned as received. HMRC accept that at face value it appears from the Appellant's declarations that no financial benefit is being received from the investment of his time and money. However, whilst not impossible, HMRC submits that it is reasonable to  
20 check this position which appears to lack commerciality.

(iv) If you have any connection to the ownership of Lugano Group, either directly or indirectly, i.e. via trusts or nominees;

25 (v) If you have transferred any cash or assets to the company, including loans, or have a contract to provide services to the company; if so, I require an analysis of the assets transferred;

(vi) If you have the power to enjoy the income or gains of Lugano Group in any way, either through share ownership or being the beneficiary of a trust etc.

30 23. Ms Browne noted that despite the Appellant's involvement in the Lugano group as a director and via investment, on the face of it he derives no benefit from the UK based companies. HMRC is still at the information gathering stage and submits that the information is reasonably required to consider the Transfer of Assets legislation which may have a bearing on the Appellant's tax position. Ms Browne highlighted that the Appellant is a director of a company whose parent company is abroad; it is entirely possible that the parent company receives dividends from its subsidiaries,  
35 which ultimately find their way to directors and owners of the Lugano group.

The legislation

24. As to whether the information sought is reasonably required, HMRC relied on *Kevin Betts and The Commissioners for HM Revenue and Customs* [2013] UKFTT 430 (TC) (“*Betts*”) in which the following was stated:

5 “What ultimately governs the case is whether the statements sought are reasonably required for the purpose of checking the appellant’s tax position. The manuals do not alter the fact that that is an objective test. And we find that that test was satisfied.”

25. Ms Browne submitted that the test to ask is: “what would HMRC need for the purpose of checking the Appellant’s tax position?” Given the limited facts known  
10 about the Appellant’s finances, Ms Browne submitted that each of the items requested are reasonably required for the purpose of checking the Appellant’s tax position.

26. Ms Browne highlighted the restrictions governing Schedule 36 as to what information can be requested and noted that there is no suggestion that the items requested are not in the power or possession of the Appellant or that the items fall  
15 within section 12 PACE 1984.

27. In relation to the Appellant’s objection to the notice relying on Article 8 ECHR (the right to respect for private and family life) Ms Browne referred me to *The Commissioners for HM Revenue and Customs and Sokoya* [2008] EWHC 2132 (Ch) in which Floyd J said:

20 “ So far as article 8 is concerned, Mr Sokoya relied on the intrusion into his privacy that compliance with the section 19 notice would entail. Article 8 expressly recognises the need in a democratic society to preserve the economy and wellbeing of the country. Regrettable though it might seem, tax collection comes fully within that exception. I therefore see no reason why a valid section 19A notice should be  
25 rendered any less so in this case by the provisions of article 8 of the convention.”

28. Ms Browne acknowledged that *Sokoya* relates to the predecessor to Schedule 36, Section 19A TMA 1970, however submitted that it is nevertheless relevant to the issue.

29. As to the Appellant’s argument that HMRC are on a fishing expedition in  
30 opening the enquiry and requesting information, Ms Browne highlighted that a Section 9A enquiry must be opened within the enquiry window and following notice of the enquiry being served on the taxpayer. There is no requirement for HMRC to justify the opening of an enquiry if Condition A of paragraph 21 has been met. As to Condition B of paragraph 21 which requires that HMRC has “reason to suspect”, Ms  
35 Browne referred to *Spring Capital Ltd and The Commissioners for HM Revenue and Customs* [2015] UKFTT 8 (TC) at [33] & [34]:

“A Fishing expedition? By using the term ‘fishing expedition’ I understood Mr Thomas to mean that HMRC were seeking to investigate the appellant’s tax return without having any reason to suspect that it was wrong.

5 So did HMRC exceed its powers in issuing the information notice? Paragraph 1 of  
Sch 36 provides that an HMRC officer can issue an information notice 'if the  
information or document is reasonably required by the officer for the purpose of  
checking the taxpayer's tax position'... There is nothing in this section that requires  
HMRC to suspect that the return is incorrect before issuing an information notice.  
HMRC are entitled to check taxpayer's tax position and they are entitled to any  
documents or information reasonably required for the purpose of doing so. In other  
words, HMRC are entitled to undertake 'fishing expeditions' when checking returns:  
they do not need suspicion in order to check a tax return."

10 The Appellant's case

30. On behalf of the Appellant, Mr Leslie made the following submissions:

HMRC's suspicion of undeclared interest from loans

15 31. Mr Leslie submitted that HMRC has failed to show sufficient evidence that the  
loans assigned to the Appellant on 18 June 2010 became income bearing three tax  
years later in the year currently under enquiry.

32. Mr Leslie noted that HMRC did not challenge the Appellant's 2010/11 Self  
Assessment return in which the assignment of the loans was declared and CG taxes  
paid. It logically follows therefore that if the loans were not interest generating in  
2011/2012 no interest would be expected in 2013/2014.

20 33. Mr Leslie relied on the earlier investigation by HMRC's Specialist Investigation  
Unit into the Appellant's 2011/2012 return which had led to the relevant enquiry  
being closed without amendment to the return. Similarly HMRC closed an enquiry  
into the Appellant's 2012/2013 return with no amendments.

25 34. Mr Leslie submitted that on the basis that no interest was returned in 2011/2012  
as none was received, the information sought is not reasonably required.

Are the Respondents reasonably entitled to ask the Appellant if he has any connection  
to the offshore company Lugano Group Ltd or has transferred assets into that  
offshore company?

30 35. Mr Leslie asserted that any income arising from the Appellant's investments  
will be declared and paid to the appropriate tax authorities as and when they are  
crystallised. HMRC has failed to exercise its power to pursue the alternative avenue  
open to it; namely requesting information under UK/Guernsey Tax Information  
Exchange.

35 36. HMRC has failed to set out why they suspect the Appellant has transferred  
assets abroad and any income arising. Mr Leslie noted that the Appellant is not listed  
as a director of the Lugano Group Ltd. HMRC's use of Schedule 36 is based on  
speculative assumptions.

The Appellant's position

37. The information or documentation sought by HMRC must be reasonably required. By virtue of its earlier enquiries HMRC has already been satisfied that the Appellant has sufficient means and that there was no interest generating income in earlier years.

38. As to the issue of Transfer of Assets Abroad, the Appellant was neither an officer or director of the offshore companies and had no income in 2013/14 to declare. Mr Leslie submitted that the Appellant's case is similar to *Kevin Betts and The Commissioners for HM Revenue and Customs*, relying on [18] – [22]:

10 “The way in which HMRC relied on condition B was put in their statement of case as follows—

15 “29. HMRC's contention is that the information already provided by Mr Betts gives a partial picture of his movements and more particularly his ties to the UK in the relevant period. Furthermore, based on that information there remains a doubt that he had left the UK permanently by 6 April 2008 to become not resident. The requested information will complete that picture and, if it shows that his ties remained substantially in tact [sic], condition B is satisfied. The Inspector will be able to show that an amount which ought to have assessed [sic] may not have been. The information is therefore reasonably required for the purpose of checking Mr Betts tax position and the appeal should be dismissed.”[emphasis added]

25 There are three ways in which condition B may be met. These are set out in paragraph 21(6)(a) to (c) of Schedule 36. Mr Birkett explained that his reliance on condition B was based on the first of those three ways, in paragraph 21(6)(a) of Schedule 36. That paragraph provides that “Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that...(a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed”.

30 We asked Mr Birkett whether he was really saying, as indicated in paragraph 29 of HMRC's statement of case (set out above), that he needed the information in order to satisfy condition B. Mr Birkett replied “yes”.

Mr Gordon submitted that that response from Mr Birkett would seem to kill the case. Mr Gordon asked us therefore to allow the appeal on the basis of that response.

35 We agreed with Mr Gordon that it appeared to be the wrong way round to seek the documents in order to satisfy condition B. The position appeared rather to be that condition B must be satisfied in order for the documents to be validly sought. We thought it fair however to explore HMRC's position further.”

39. Mr Leslie submitted that HMRC have failed to satisfy the validity test at paragraph 1(1) of Schedule 36, namely that the information is reasonably required.

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## Discussion and Decision

40. I considered the parties' submissions carefully together with all of the documents provided to me. The issue for me to decide is whether the items requested by HMRC are reasonably required by the officer for the purpose of checking the Appellant's tax position.

41. The notice requested that the Appellant produce "*copies of loan agreements for the loans to Bloomsbury Ltd, Woolsington Bridge Nurseries and Leftbank Development Ltd. If there are no written agreements please let me know the agreed terms and conditions of the loans, supported by underlying paperwork such as director's meeting notes etc*".

42. In my view these documents are clearly relevant as part of overall picture in order to establish the Appellant's true liabilities; the fact that HMRC had previously been provided with documents in the course of an earlier enquiry does not alter this position. First it must be noted that the documents were considered in a wholly different context. Second, the documents were produced a number of years ago and there may since have been amendments to the terms and conditions which impact on the Appellant's tax position.

43. I also agree with and adopt the approach taken by Judge Poole in *Whitefields Golf Club Ltd, Whitefields Golf Ltd & Draycote Hotels Ltd and The Commissioners for HM Revenue and Customs*. The fact that HMRC are unable to locate the documents previously provided by the Appellant is a matter of administration and has no bearing on whether the documents set out in the notice are "*reasonably required*".

44. The information notice issued by HMRC requested the full address of the company Bloomsbury Ltd. In circumstances whereby HMRC are currently unable to identify the company with any certainty without this information I am satisfied that it is reasonably required for the purpose of checking the Appellant's tax position.

45. HMRC has also requested clarification as to whether or not the Appellant is a director of the Lugano Group. The Appellant is clearly associated with the Lugano Group in his role as a director of Lugano Developments Ltd. I am satisfied that at present the ultimate ownership of the Lugano Group is not transparent and HMRC require the information to check whether or not, as it appears on the face of the limited information known, the Appellant does not receive any financial benefit from his loans to Lugano Developments Ltd. I am therefore satisfied that this information is reasonably required for the purpose of checking the Appellant's tax position.

46. For the same reason I am satisfied that the information as to whether or not the Appellant has any connection to the ownership of Lugano Group, either directly or indirectly is reasonably required. HMRC also seek to establish whether cash or assets have been transferred to the Lugano Group and whether the Appellant has "*the power to enjoy the income or gains of Lugano Group in any way, either through share ownership or being the beneficiary of a trust etc*". On the basis that the information known to HMRC so far is limited and does not enable HMRC to check the

Appellant's tax position in this regard, I am satisfied that the information is reasonably required.

47. I agree with and adopt the words of Floyd J in *Sokoya* as to the fact that:

5     *"Article 8 expressly recognises the need in a democratic society to preserve the economy and wellbeing of the country. Regrettably though it might seem, tax collection comes fully within that exception."*

48. Although the case involved a section 19A notice as opposed to a notice under Schedule 36 the principle is equally applicable to the Appellant's appeal.

10 49. I rejected Mr Leslie's submission that there is a requirement for HMRC to demonstrate sufficient evidence to justify its suspicions or a basis for HMRC's wish to check if assets have been transferred abroad. As to the complaint that HMRC are conducting a fishing expedition, Judge Mosedale's comments in *Spring Capital Ltd* summarise the position accurately:

15     *"There is nothing in this section that requires HMRC to suspect that the return is incorrect before issuing an information notice. HMRC are entitled to check taxpayer's tax position and they are entitled to any documents or information reasonably required for the purpose of doing so. In other words, HMRC are entitled to undertake 'fishing expeditions' when checking returns: they do not need suspicion in order to check a tax return."*

20 50. In my view the earlier enquiries opened by HMRC into the Appellant's tax affairs, which I accept were closed without any amendments to the Appellant's returns, do not have a bearing on whether the information and documents set out in the notice are reasonably required. Those enquiries took place in a different context and related to earlier years; the information and documents sought under the notice  
25 against which the Appellant now appeals relate to the tax year ended 5 April 2014 and I am satisfied that the information and documents set out in the notice are reasonably required to check the Appellant's tax position for that year. I was also satisfied that HMRC's decision not to seek information from the Guernsey Tax Authority has no bearing on the test that I must and do apply in this case.

30 51. By virtue of paragraphs 1(1) and 21(1) and (3) of Schedule 36, two requirements must be satisfied for a valid notice to be given. First, that the information or document sought by the notice must be reasonably required by the officer giving the notice for the purpose of checking the taxpayer's tax position requirement (paragraph 1(1)). Second, that at least one of conditions A to D must be met (paragraph 21(1) and (3)):  
35

40     *21(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period...*

(3) *Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.*

(4) *Condition A is that a notice of enquiry has been given in respect of—*

(a) *the return, or*

5 (b) *a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”),*

*and the enquiry has not been completed.*

10 (6) *Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that—*

(a) *an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,*

(b) *an assessment to relevant tax for the chargeable period may be or have become insufficient, or*

15 (c) *relief from relevant tax given for the chargeable period may be or have become excessive.*

52. I did not agree that *Betts* assisted the Appellant’s case; in *Betts* HMRC accepted that there was no valid enquiry for the purposes of Condition A, and that Condition A was not met. HMRC sought instead to rely on Condition B. In the appeal before me  
20 there was no suggestion that the enquiry was not valid and I do not make that finding. On the basis that Condition A is satisfied there is no need to consider the alternate Conditions further.

53. For the reasons set out above I dismiss the appeal and confirm the notice under appeal.

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**JENNIFER DEAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 AUGUST 2016**

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