



TC05801

Appeal number: TC/2016/05056

Income tax – paragraph 1 Schedule 36 Finance Act 2008 notice to provide information – whether items were reasonably required for the purposes of checking the taxpayer’s income tax position – items comprised basic financial information – held: they were reasonably required – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BEMAL PATEL

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS (“HMRC”)**

**TRIBUNAL: JUDGE ZACHARY CITRON
MR DAVID EARLE**

Sitting in public at Fox Court, London on 2 February 2017

**Mr Tony Fosgate and Mr Paul Reynolds of Haslers (accountants) for the
Appellant**

Mr Brian Skelley, Officer of HMRC, for the Respondents

DECISION

1. This issue in this case was whether items in a notice issued to the appellant by HMRC requiring him to provide information and produce documents were reasonably required by HMRC for the purpose of checking the appellant's tax position.

The appeal

2. By letter of 17 May 2016, HMRC issued a notice (the "Notice") under paragraph 1 Schedule 36 Finance Act 2008 requiring the appellant to provide certain information and documents by 22 June 2016.

3. The appellant requested a statutory review of HMRC's decision to include five of the items in the Notice (the "contested items"); by letter dated 25 August 2016, HMRC upheld their decision and required the appellant to produce the contested items within 30 days.

4. The appellant appealed against the contested items in the Notice by notice of appeal dated 22 September 2015

5. The contested items were as follows (using the numbering in the Notice):

Return for the period: 6 April 2012 to 5 April 2013

- 1) Details of all bank, building society, investment, savings, loan, credit and store card accounts, and all other financial assets and liabilities such as trust and pension schemes held (in the UK or elsewhere) in your name, or in joint names, or over which you had control for the year to 5 April 2013.

- 2) For each of the items detailed above (other than (a) those of the items detailed above for which your statements, etc have already been provided and (b) those of the items above that are under your control by virtue of your office as a director of the company) statements, passbooks, cheque book stubs, paying-in slips and other documents showing all transactions in the year to 5 April 2013.

- 3) Deposits into the Barclays business account of £138,000 have been explained as drawings from your loan account with Pharmaceuticals Direct Ltd. Please provide details – dates and amounts – of other sums withdrawn from the loan account and the destinations of the various sums.

Return for the period: 6 April 2013 to 5 April 2014

- 8) Details of all bank, building society, investment, savings, loan, credit and store card accounts, and all other financial assets and liabilities such as trust and pension schemes held (in the UK or elsewhere) in your name, or in joint names, or over which you had control for the year to 5 April 2014.

- 9) For each of the items detailed above (other than those of the items above that are under your control by virtue of your office as a director of the company) statements, passbooks, cheque book stubs, paying-in slips and other documents showing all transactions in the year to 5 April 2014.

Evidence

5 6. We had a document bundle containing copies of correspondence between the parties. We had no witness evidence.

Findings of fact

10 7. The appellant's income tax returns for the 2012-13 and 2013-14 tax years contained three main schedules: an employment schedule (there were three employments common to both tax years, two of which were by a close company of which the appellant was a director; there was an additional (fourth) employment in the 2013-14 tax year); a self employment schedule (in respect of a private car hire business); and a UK property schedule (22 properties were rented out).

15 8. On 28 November 2014 HMRC gave notice under s9A Taxes Management Act 1970 of their intention to enquire into the appellant's 2012-2013 income tax return. On the same date, HMRC wrote to Haslers, the appellant's accountants, requesting 24 items of information and documents in relation to their check of the appellant's tax return.

20 9. On 11 February 2015 Haslers responded to HMRC with the information and documents requested so far as they related to the appellant's car hire business, property business and other items specified on the appellant's tax return. However, they did not provide information or documents in relation to the following two items:

25 "22 Details of all bank, building society, investment, saving, loan, credit and store card accounts, and all other financial assets and liabilities such as trust and pension schemes held (in the UK or elsewhere) in your name, or in joint names, or over which you had control for the year to 5 April 2013.

23 For each of the items detailed above, statements, passbooks, cheque book stubs, paying-in slips and other documents showing all transactions in year to 5 April 2013."

10. Haslers' letter said this by way of explanation for not sending the above information and documents:

30 "We accept that HMRC are fully entitled to see the bank statements for the account that relates to income and outgoings from [the appellant's] rental business and we will provide these under separate cover within the next 10 days. However we cannot see, at this stage of the enquiry, that you have any valid or reasonable grounds to request the balance of personal information. In particular we ask you to clarify whether, in your opinion, your request extends to company bank accounts over which [the appellant] has control as a director, for any companies that are not the subject of your separate enquiries. It does seem that the terms of your notice seem to suggest that you believe you are able to require production of statements for separate legal entities such as trusts and companies and we should be grateful if you would clarify if this is the formal view of HMRC, or whether on reflection you accept that the terms of your notice have been too widely drawn."

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11. In HMRC's letter dated 1 May 2015, the inspector of taxes said this as regards the above items:

5 "On this occasion the [appellant's private bank] statements were requested on the basis that [the appellant's] tax affairs are quite complex and reviewing all transactions could help to build a full picture, and allow items to be cross checked ...

I still consider that it would be beneficial to make [these items] available but appreciate your decision not to send anything at the present time. This doesn't however preclude the fact that [these items] may be requested at a later date, once responses are received from this (and any future) letters.

10 I can also confirm the request doesn't extend to any company bank accounts that [the appellant] may have control of as a director. Trust details depend on the nature of the case and trust involved, with discussions taking place about what was needed. My enquiry deals with [the appellant's] personal affairs and other factors will be considered only when it's necessary to do so."

15 12. By letter of 4 August 2015, HMRC issued a notice under paragraph 1 Schedule 36 Finance Act 2008 requiring the appellant to provide seven items of information and documents by 4 September 2015. The items did not include the two items described above. Haslers responded to this information notice with information and documents in a letter dated 3 September 2015.

20 13. On 4 November 2015, HMRC gave notice under s9A Taxes Management Act 1970 of their intention to enquire into the appellant's 2013-2014 tax return. On the same date, HMRC wrote to Haslers requesting nine items of information and documents, including the two items which were the subject of earlier correspondence, in relation to both the 2012-13 and 2013-14 tax years. The second item was amended
25 to exclude (for the 2012-13 tax year) items already provided and (for both tax years) items under the appellant's control by virtue of his office as a director of the company. In the covering letter to Haslers, the inspector of taxes said this:

30 "The information and documents that we received with your letter of 3 September 2015 make it clear that [the appellant] has a number of bank and possibly investment accounts in addition to the business bank accounts the statements for which we received on 19 February 2015. During the tax year 2012-13 it appears that [the appellant] expended large sums for the property business that were not withdrawn from the business bank accounts we have seen; at other times he was in receipt of large sums which were not deposited in the business bank accounts we have seen. [The
35 appellant's] financial transactions include numerous transfers of large sums between accounts – his personal accounts and those of the companies he controls. His financial affairs are not simple and in order to understand them, and to check that his self-assessment tax return is correct, we need to have sight of the statement of his accounts.

40 I have re-worded our information and documents request slightly to address your concern that it is so widely drawn that it includes company bank accounts: we would like to know about the existence of all such accounts, but at this stage we ask for statements of only the non-company accounts."

45 14. On 7 December 2015, Haslers responded to HMRC with some of the information and documents requested in HMRC's letter of 4 November 2015. However, Haslers did not provide the information and documents requested with

respect to items 1, 2, 8 and 9 (which correspond to the two items referred to above, for each of the two tax years in question). Their covering letter said this:

5 “Under paragraphs 1, 2, 8 and 9 it appears you are effectively requesting details and documentation in respect of every conceivable personal non-business financial transaction undertaken by [the appellant] on that basis only that you wish to check that the self assessment return is correct and you have concerns that funds introduced and taken out of the business come from personal sources.

10 While we are happy to provide information that will help clarify the nature of individual items on the tax return, you will appreciate that our view remains that such a request is too widely drawn and that the specific relevance of this information to checking individual items on the tax return has yet to be demonstrated. The enquiry into [the appellant’s] affairs has now continued for almost a year and during that time a large amount of information and explanations have been asked for and supplied. However we are yet to be advised of any specific concerns about the entries on his tax return, and our concern is that in the absence of anything specific being raised in the enquiry it is now taking on the nature of a ‘fishing expedition’.”

15 15. In a letter of 11 December 2015 to Haslers, HMRC reiterated their request for these four items.

20 16. The Notice (issued on 17 May 2016) included nine items: the appellant responded with information and documents related to four of the items, but did not provide information or documents with the four items referred to above (now numbered 1, 2, 8 and 9), or with item 4 which read as follows:

25 “4. Deposits into the Barclays business account of £138,000 have been explained as drawings from your loan account with Pharmaceuticals Direct Ltd. Please provide details – dates and amounts – of other sums withdrawn from the loan account and the destinations of the various sums.”

(Pharmaceuticals Direct Ltd was one of the appellant’s employers – it was a close company of which the appellant was a director).

30 17. Haslers wrote to HMRC on 9 June 2016 appealing against the Notice. HMRC’s response to the appellant of 19 July 2016 included the following:

35 “4. Checking a self-assessment tax return is not a matter of checking only those entries in the return where an amount of income or expenditure, gain or loss, has been declared. It is also necessary to check whether there are omissions: a box left empty, or completed with a zero, in a tax return is a declaration, and that declaration is subject to being checked.

40 5. In the case of your tax returns it is particularly important to check that the entries are not only correct but also complete. This is because your financial affairs appear complex and multi-faceted. My understanding is that in addition to your controlling interest in the Pharmadent group of companies and your property rental business you also have shareholdings in more than twenty other companies (and directorships of some others). I have reason to believe that you own properties from which no rental income is declared on your returns. I also have reason to believe that you have at least one property overseas; at least one overseas bank account; and investments in businesses in the US and the UK. You have other assets and investments of which I am

unaware. All of these represent sources from which you may have derived taxable income or gains, or in respect of which you may have incurred tax-allowable expenditure, and I cannot check whether this is the case merely by checking the declared sums in your tax returns. It is therefore reasonable for me to ask for information about all of your financial assets and accounts, and the statements showing transactions associated with them.”

The law

References to “paragraphs” are to paragraphs of Schedule 36 Finance Act 2008

18. Under paragraph 1, HMRC 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 HMRC for the purpose of checking the taxpayer’s tax position.

15 Under paragraph 58, “checking” includes carrying out an investigation or enquiry of any kind.

Under paragraph 64, “tax position” in relation to any person means the person’s position as regards any tax.

19. Under paragraph 21, where a person has made an income tax return, a notice under paragraph 1 (a “notice”) may only be given for the purpose of checking that person’s income tax position where, or to the extent that, any of conditions A to D has been met:

(1) Condition A includes where a notice of enquiry has been given in respect of the tax return, and has not been completed.

25 (2) Condition B is that HMRC has reason to suspect that (amongst other things) an amount that ought to have been assessed to tax may not have been so assessed.

(Conditions C and D are not relevant to this decision).

20. Under paragraph 29(1), a taxpayer who has been given a notice may appeal against the notice or any requirement in the notice.

21. Under paragraph 32(3), on an appeal the First-tier Tribunal (the “tribunal”) may

- (a) confirm the notice or a requirement in the notice,
- (b) vary the notice or such a requirement, or
- (c) set aside the notice or such a requirement.

22. Under paragraph 32(4), where the tribunal confirms or varies the notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement

- (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 HMRC following the tribunal's decision.

5 23. Under paragraph 32(5), a decision of tribunal on an appeal against a notice is final.

Appellant's arguments

10 24. The appellant's representatives submitted that the contested items were not reasonably required for the purposes of checking the appellant's tax position because they did not reveal any particular concerns about the accuracy of the tax returns for the years in question. They submitted that, in order for information and documents to be validly required, they had to be specific and targeted – rather than open-ended requests for financial information, as in the contested items. If, for example, as
15 HMRC's letter of 19 July 2016 indicated, HMRC were concerned about properties on which rental income was received and not included in the appellant's tax return, HMRC should have specified those properties in the Notice. There had to be a link between the request for information or documents and a specific issue.

20 25. They cited the judgement of the High Court (Simler J) in *R (on the application of Derrin Brother Properties Ltd and others) v HMRC* [2014] STC 2238 at [20], as regards 'fishing expeditions':

25 "Finally, HMRC may not use their Schedule 36 powers for a fishing expedition – whether for their own or the purposes of another revenue authority. A broadly-drafted request will not be valid if in reality HMRC are saying 'can we have all available documents because they form so large a class of documents that we are bound to find something useful.' What is required is that the request is genuinely directed to the purpose for which the notice is given, namely to secure the production of documents reasonably required for carrying out an investigation or enquiry of any kind into another taxpayer's tax position."

30 26. The appellant's representatives submitted that this means there has to be a bona fide attempt to deal with specific concerns that the documents requested are expected to resolve; and not a blanket request for information to see what might 'turn up'. A vague and uncertain concern on HMRC's part that something may be missing from the taxpayer's return, giving rise to a blanket request for information, does not, in the
35 appellant's representatives' view, constitute a request that is genuinely directed to the purpose of furthering the progress of the enquiry.

40 27. The appellant's representatives accepted that HMRC were entitled to open enquiries into taxpayers' tax returns at "random" i.e. where HMRC had no reason to suspect that the tax return was incorrect or incomplete. However, they submitted that HMRC were entitled to take such a "random" approach only to open an enquiry. Here, where the enquiries had been open for some time, the appellant's

representatives submitted that HMRC should be able to tell the taxpayer what particular point they were pursuing in requesting further information.

28. The appellant's representatives referred to the First-tier Tribunal's statement in *Betts v HMRC* [2013] UKFTT 430 (TC) at [22]. The tribunal there was discussing the application of Condition B in paragraph 21 Schedule 36 Finance Act 2008 – a provision which is not relevant the present case, as Condition A is clearly satisfied here – which requires that HMRC have reason to suspect that an amount that ought to have been assessed to tax has not been so assessed. On this, the tribunal said:

10 “We agreed with [counsel for the appellant] 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.”

29. The appellant's representatives submitted that over the course of their enquiries into the tax returns of the appellant, HMRC's information requests had sometimes been in relation to immaterial matters – £6 of bank interest and £257 of dividend income for which a voucher was pursued; they cited other examples from enquiries into companies associated with the appellant.

30. As regards item 3 of the Notice in particular, the appellant's representatives asserted that the information requested had already been provided to HMRC as part of their enquiry into the tax returns of a company associated with the appellant; and therefore this item did not meet the “reasonably required” threshold.

31. The appellant's representatives noted that different tribunals had come to different conclusions as to which party bore the burden of proof in cases such as this one: see for example *Betts* at [14], where it was common ground between the parties that the burden lay on HMRC. It was not accepted that the burden of proof lay with the appellant.

HMRC's arguments

32. Mr Skelley submitted that the contested items in the Notice were required in order to check:

- (1) whether the declared sums in the tax returns were correct;
- (2) that all income that should have been included on the returns was so included.

33. Mr Skelley submitted that the contested items had a direct bearing on the appellant's tax position, and are therefore required for the purpose of checking his tax position.

34. In respect of items 1 and 8 in the Notice, Mr Skelley submitted that such information could comprise evidence of taxable income (such as interest or dividends), or it could comprise evidence of sources of income for the appellant that could be used to generate taxable income. Credit card accounts, for example, could indicate how the appellant used money made available to him from other sources. The

information requested would help HMRC check that they had a complete picture of the sources of the appellant's money. Similarly, details of investments in financial assets such as pension schemes, would help HMRC check the money funding these investments – and whether that money was from a taxable source. Items 2 and 9 were the documentary evidence for the individual items listed in 1 and 8.

35. Mr Skelley maintained that nothing in case law or statute would require HMRC, before opening an enquiry, to have or to notify any concerns that the return is incorrect; and that nothing in Schedule 36 Finance Act 2008 required HMRC to hold such a suspicion to in order to issue a valid information notice where an enquiry is open.

36. Mr Skelley cited the comments of the First-tier Tribunal (Judge Barbara Mosedale) on “fishing expeditions” in *Spring Capital Ltd v HMRC* [2015] UKFTT 0008 (TC) at [33-34]:

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

So did HMRC exceed its powers in issuing the information notice? ... There is nothing in [paragraph 1 Schedule 36 Finance Act 2008] 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 purposes 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.”

37. Mr Skelley submitted that item 3 of the Notice was needed to check whether sums withdrawn from Pharmaceuticals Direct Ltd by means of the appellant’s loan account with that company had been used to acquire income-producing assets and if so to check that such income was correctly accounted for on the appellant’s tax returns.

38. Mr Skelley submitted that the fact that HMRC requested information from one party in a transaction (here, the company associated with the appellant) did not mean there was no basis for HMRC requiring the same information from another party to the transaction – for example, it would be appropriate for HMRC to require information about the same transaction from both supplier and customer.

39. Mr Skelley submitted that the onus in the appeal was on the appellant – he cited the decision of the First-tier Tribunal (Judge Anne Redston and Ms Helen Myerscough) in *Joshy Mathew v HMRC* [2015] UKFTT 0139 (TC) at [82], where the tribunal found that the weight of authority is that the burden of proof in relation to the ‘reasonably required’ test in Schedule 36 rests on the appellant, and not on HMRC.

40. Mr Skelley observed that the information notices as varied by the tribunal in *Joshy Mathew* contained items similar to the contested items in this case (see item 5 2011-12 and item 2 2012-13, both of the second notice as varied, set out in Appendix 1 to the tribunal’s decision).

41. Mr Skelley did not accept that HMRC's enquiries had focused on immaterial matters.

Discussion

5 42. This appeal turns on whether the contested items were within the remit of the powers given to HMRC by law to require provision of information and production of documents by taxpayers. Parliament chose to define the remit of those powers by reference to information and documents that were "reasonably required" by HMRC "for the purpose of checking the taxpayer's tax position".

10 43. The parties pointed out that both the High Court (in *Derrin Brother*) and the tribunal (in *Spring Capital*) have expressed views as to whether this "reasonably required" test is satisfied where HMRC undertake a so-called 'fishing expedition'. On the face of it, they reached diametrically opposing conclusions. However, it seems to us that on closer inspection, the divergence between court and tribunal is more apparent than real: the dicta of both emphasise the words of the underlying statute.

15 Simler J in the High Court came at this from the angle of requiring that there be a genuine exercise of checking the taxpayer's tax position through an investigation or enquiry of any kind – when she used the term 'fishing expedition', she meant a case where HMRC's request was not genuinely directed to that purpose. Judge Mosedale in the tribunal, on the other hand, came at this from the angle of whether it was a

20 requirement that HMRC had a suspicion that the tax return was incorrect (and she made clear that she was treating 'fishing expedition' as meaning where HMRC investigate a tax return without having reason to suspect that it is wrong). The tribunal decided (correctly, in our respectful view) there was no such requirement: the one and only requirement is that the information and documents are reasonably required for

25 the purpose of checking the taxpayer's tax position.

44. We do not therefore accept the appellant's representatives' submissions as to the relevance of HMRC's unwillingness (or inability) in this case to link the contested items to specific concerns about the accuracy of the tax returns in question. We agree with HMRC that such linkage is not, in itself, a relevant consideration as regards the

30 validity of the contested items. Indeed, it is clear that HMRC's powers under the statute are not limited to checking items stated on a tax return – they are broader than that – and this makes good sense, as Parliament would not have intended to restrict HMRC's ability to get information about matters that were omitted from a tax return but should have been included.

35 45. The appellants' representatives referred us to comments of the tribunal in *Betts* (at [22]) suggesting that HMRC should not be able to seek documents in order to satisfy condition B in paragraph 21 Schedule 36 Finance Act 2008. We do not find these comments relevant to this case, as condition B is not in point. The wording of condition B does, however, demonstrate that where Parliament intended that HMRC

40 must have "reason to suspect" inadequacies in the tax return in order for HMRC to have power to require information or documents, Parliament said so in clear terms. In this case – where condition A is satisfied and so condition B is not relevant – no such "reason to suspect" is required by the statutory scheme.

46. We now turn to consider the contested items in the light of HMRC's statutory powers. Four of the items (1, 2, 8 and 9) relate directly to what can only be regarded as basic financial information - bank and other financial accounts, and financial assets and liabilities. The fifth (item 3) is also in our view basic financial information as it relates to amounts borrowed by the appellant from a "loan account" with a related company. Basic financial information of this kind shows the details of a person's income and expenditure. Income and expenditure are relevant to a person's income tax position. It seems to us that precisely this kind of basic financial information would be required to "check" the income tax position of a person in the appellant's position. The contested items do not answer to Simler J's description of a 'fishing expedition', being where the reality of the situation is that HMRC ask for "all available documents because they form so large a class of documents that [HMRC] are bound to find something useful". The reality of the situation here is that HMRC are asking for a specific class of information and documents - basic financial information - so they can check that the tax returns are correct and complete.

47. We note that the contested items relate only to the "personal" accounts, etc, of the appellant; and this is because the appellant had already supplied HMRC with the financial information they required in respect of his "business" accounts etc. We do not think this affects the question of whether the contested items are required to check the appellant's income tax position. The fact here that the appellant has supplied HMRC with *some* (perhaps *most*) of his financial information – that which he earmarked as relating to his business accounts - does not in our view detract from the position that *other* basic financial information is reasonably required in order to check his income tax position.

48. The statute requires that the items are not just "required", but "reasonably required". We understand this to mean that a person in HMRC's position, acting reasonably, would require the contested items for the purpose of checking the appellant's income tax position. We consider that requirement is satisfied here as no evidence was produced to suggest either that the contested items do not exist, or that it would cause hardship or undue expense to the appellant to produce them. Moreover we note here that HMRC acted reasonably in modifying their original request as regards the contested items in response to representations from Haslers (see extract from HMRC's letter of 4 November 2015 quoted at [13] above), and also by in effect deferring their request for the contested items, at the appellant's request (see extract from HMRC's letter of 1 May 2015 quoted at [11] above).

49. We now turn to the appellant's representatives' assertion that item 3 was not "reasonably required" because it had been provided to HMRC as part of their enquiries into companies associated with the appellant. We do not accept this argument for the simple reason that the appellant is a different taxable person from those companies. The statutory test is whether the item is reasonably required for checking the tax position of the taxpayer in question. If the answer to that is "yes" – as we have decided it is – then it is not relevant that another taxpayer may have provided that item to HMRC. We note that, as a practical matter, it should be easy to provide this information if, as the appellant's representatives contended, it has already been assembled and provided in relation to a company related to the appellant.

50. Arguments were made by the parties as to the materiality of items requested by HMRC as part of their enquiries into the tax returns of the appellant and companies associated with him. We do not consider it necessary, for the resolution of this appeal, to adjudicate (or otherwise comment on) this specific matter.

5 51. Whilst each party asserted that the burden of proof in this case lay with the other party, neither party provided us with substantive submissions on the point. We have been assisted by the thorough exploration of the question of burden of proof in “reasonably required” cases like this one set out by the tribunal in *Joshy Mathew* at [66-87]. Whilst finding (at [82]) that the weight of authority is that the burden rests on the appellant, the tribunal there noted (at [85]) that it “remains arguable” that the burden is on HMRC, and, in that case, took the approach of assuming the burden lay on HMRC, and delving further into the matter only in case HMRC were unable to meet the burden (which, in that case, they were). We note the tribunal took a similar approach in *Marilyn May Phillipou* [2017] UK FTT 0020 (TC) (Judge Nigel Popplewell and Mr Simon Bird) at [18-19].

52. We take a similar approach here. Whilst we (respectfully) agree with the tribunal in *Joshy Mathew* that the burden should on balance lie with the appellant – in which case, we have not been persuaded on the evidence before us that the contested items were *not* “reasonably required” – we have gone on to consider the alternative that the burden lies with HMRC – in which case, we have been persuaded on the evidence before us that the contested items *were* “reasonably required”. This is not therefore a case that turns on which party has the burden of proof and so a definitive decision on that point may, in the words of the tribunal in *Joshy Mathew* (at [87]), “be the task of another tribunal, on another day”.

25 **Conclusion**

53. The appeal is dismissed; the requirements in the Notice in relation to the contested items are confirmed.

54. We direct that the appellant must comply with the requirements in the Notice in relation to the contested items within 30 days of the release of this decision.

55. This document contains full findings of fact and reasons for the decision.

56. This decision is final pursuant to paragraph 32(5) Schedule 36 Finance Act 2008.

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ZACHARY CITRON
TRIBUNAL JUDGE

RELEASE DATE: 19 April 2017

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