



TC06064

Appeal number: TC/2016/03065

INCOME TAX -- Notice to taxpayer under Schedule 36 FA 2008 for private bank statements – appeal on grounds that all relevant information provided, private bank statements not being relevant – held private bank statements reasonably required by HMRC for checking taxpayer’s tax position – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HASAN CEMAL

Appellant

- and -

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

TRIBUNAL: JUDGE RICHARD THOMAS

Sitting in public at Fox Court, London EC1 on 26 June 2017

The Appellant did not appear and was not represented

Mrs B Levy, Presenting Officer, for the Respondents

DECISION

1. This was an appeal by Mr Hasan Cemal (“the appellant”) against a notice given to him under Schedule 36 Finance Act (“FA”) 2008. I issued a summary decision on 5 30 June 2017. On 27 July 2017 CTMP Accountants Ltd (“the accountants”) acting for the appellant asked for a decision giving full findings and reasons. As the request was within the time allowed for making such a request, I have produced this “full” decision.

2. The accountants did not state the reason they required a full decision rather than making, as I told them they could, an application to set aside my decision given the 10 appellant’s (and their) non-attendance. I must point out to them that there can be no appeal against this decision to the Upper Tribunal – see paragraph 32(5) Schedule 36 FA 2008 set out in §12.

Preliminary

3. At 2 pm when the hearing was due to start the appellant was not present, nor was any representative. The clerk phoned the accountants (the only phone number we had) and was told that the person concerned was out of the country and they did not think the appellant was attending. 15

4. I am satisfied that notice to attend had been sent to the appellant and his accountants and that in view of a number of earlier postponements requested by the accountants I decided that it was in the interests of justice to proceed. I had the grounds of appeal and correspondence from the accountants from which I could see what arguments would be put. 20

Evidence & Facts

5. I had two witness statements from Grace Knights, the officer of HMRC with conduct of the enquiry. Exhibited with her witness statement was the relevant correspondence and documents referred to in it (“the enquiry papers”). I asked questions of Ms Knights and from her answers, her witness statements and the enquiry papers I find the following undisputed facts. 25

6. On 18 February 2015 HMRC opened an enquiry under s 9A Taxes Management Act 1970 (“TMA”) into the 2013-14 tax return of the appellant. 30

7. On 25 March a notice under Schedule 36 FA 2008 was issued to the appellant seeking information in relation to the profits of his trade and income from property shown on the return. The request included statements for private (ie non-business) bank accounts of the appellant. Although much information was provided the 35 appellant’s accountant refused to supply the private bank statements.

8. On 11 August 2015 HMRC issued a further Schedule 36 notice seeking only the private bank statements (“the August notice”).

9. On 28 November 2015 the appellant appealed against the August notice.

10. A review was carried out and the conclusions, to uphold the notice, issued on 6 May 2016. The appeal was notified to the tribunal on 2 June 2016.

11. From the enquiry papers I also find as fact that:

(1) the business bank account contains only 31% of the declared turnover and 42% of the disclosed business expenses

(2) there are errors in the calculation of profit

(3) a claim for rent-a-room relief has not been supported by evidence

(4) there appears to be insufficient cash and other income to account for the living expenses of the appellant.

10 Law

12. The relevant provisions of Schedule 36 FA 2008 are:

“Power to obtain information and documents from taxpayer

1—(1) An officer of Revenue and Customs 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 the officer for the purpose of checking the taxpayer’s tax position.

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

Taxpayer notices following tax return

21—(1) Where a person has made a tax return in respect of a chargeable period under section 8 ... of TMA 1970 (return[] 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-paragraph[] (1) [does] 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

(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.

(5) In sub-paragraph (4), “notice of enquiry” means a notice under—

(a) section 9A ... TMA 1970, ...

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...

Right to appeal against taxpayer notice

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

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(2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer’s statutory records.

...

Procedure

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32—(1) Notice of an appeal under this Part of this Schedule must be given—

(a) in writing,

(b) before the end of the period of 30 days beginning with the date on which the information notice is given, and

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(c) to the officer of Revenue and Customs by whom the information notice was given.

(2) Notice of an appeal under this Part of this Schedule must state the grounds of appeal.

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(3) On an appeal the that is notified to the tribunal, the tribunal may—

(a) confirm the information notice or a requirement in the information notice,

(b) vary the information notice or such a requirement, or

(c) set aside the information notice or such a requirement.

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(4) Where the tribunal confirms or varies the information 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

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(b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal’s decision.

(5) 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.

5 (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

General interpretation

58 In this Schedule--

10 “checking” includes carrying out an investigation or enquiry of any kind,

“document” includes a part of a document (except where the context otherwise requires),

“HMRC” means Her Majesty’s Revenue and Customs,

15 “taxpayer”, in relation to a taxpayer notice or a third party notice, has the meaning given in paragraph 1(1) or 2(1) (as appropriate)

Tax position

20 **64**—(1) In this Schedule, except as otherwise provided, “tax position”, in relation to a person, means 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,

(b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax, and

25 (c) claims, elections, applications and notices that have been or may be made or given in connection with the person’s liability to pay any tax,

and references to a person’s position as regards a particular tax (however expressed) are to be interpreted accordingly.

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(4) References in this Schedule to a person’s tax position are to the person’s tax position at any time or in relation to any period, unless otherwise stated.”

Discussion

35 13. I observe first that the August notice was not prevented from being a valid notice by the fact that the appellant had delivered a return (paragraph 21(1) Schedule 36). That is because Condition A (sub-paragraph (4)) had been met, as an enquiry under s 9A TMA had been opened and not completed.

14. I also observe that the appellant was not prevented from appealing by paragraph 29(2) Schedule 36 because Ms Levy did not take any point about the private statements being statutory records.

5 15. Nor did she take any point about the appeal being late, which it undoubtedly was.

16. Thus the only thing that I have to consider is whether the documents, being the private bank statements for the year 2013-14, were reasonably required by HMRC for the purposes of checking the appellant's tax position for the year.

10 17. I am satisfied that the documents were so required. This is because of the facts that I found set out in §11.

15 18. The appellant says that all relevant information has been provided but that this does not include the private statements as they have no relevance to the trading profits. I do not accept this explanation in the face of Mrs Knights evidence, as among other things the private statements are relevant to the profits from property including the rent-a-room relief claim.

Decision

19. I confirm the notice in accordance with paragraph 32(3)(a) Schedule 36 FA 2008.

20 20. I do not specify a period by which the documents must be supplied. HMRC may therefore specify a period.

**RICHARD THOMAS
TRIBUNAL JUDGE**

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RELEASE DATE: 14 AUGUST 2017