



Neutral Citation: [2022] UKFTT 00160 (TC)

Case Number: TC08487

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2019/01021

*INCOME TAX – appeal against information notice – “reason to suspect” underpayment of tax sets a low bar - requirement for evidence – whether documents and information reasonably required to check tax position – Schedule 36, Finance Act 2008*

**Heard on:** 6 April 2022

**Judgment date:** 13 May 2022

**Before**

**TRIBUNAL JUDGE ALEKSANDER**

**Between**

**DAVID HACKMEY**

**Appellant**

**and**

**THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Joseph Howard, counsel

For the Respondents: Alex Turnbull, litigator, of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. The Appellant, Mr Hackmey, appeals against a notice (“the Information Notice”) to produce information and documents. The Information Notice was issued to him by HMRC pursuant to Paragraph 1 of Schedule 36 Finance Act 2008 (“Schedule 36”) on 18 September 2018 – some three and a half years ago.

2. Under Schedule 36, notices may be issued by HMRC which require a taxpayer to produce a document or provide information if the document or information is reasonably required by an HMRC officer for the purpose of checking a taxpayer’s tax position. Where the taxpayer has made a tax return, one of a number of further conditions must be met. The relevant one in this case is “Condition B”: that an HMRC officer has reason to suspect that an amount which ought to have been assessed to tax has not been so assessed to tax. The issues in this appeal are whether the documents and information are reasonably required, and whether an HMRC officer had reason to suspect. References in this decision to “paragraphs” are to paragraphs of Schedule 36 (unless the context requires otherwise).

3. At the hearing, HMRC were represented by Mr Turnbull and Mr Hackmey by Mr Howard. Michael Henstock, an officer of HMRC, gave evidence. A witness statement of his was admitted in evidence and taken as read, on which he was cross-examined. In addition, an electronic bundle of 2838 pages was submitted in evidence.

4. With the consent of the parties, the form of the hearing was V (video) using the Tribunal’s video hearing service. A face-to-face hearing was not held because of the impact of the COVID pandemic. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

### THE INFORMATION NOTICE

5. The documents and information required from Mr Hackmey by the Information Notice were varied as a consequence of a statutory review by HMRC. Following the review, the information and documents required by the Information Notice are as follows:

Please provide the following in respect of the period 06 April 2013 to 05 April 2017

1. Particulars of all bank accounts held in the UK and abroad by you, legally or beneficially, in your own name, or jointly with any other person or that you have had the power to operate. To include the name of the bank, the name of the account, sort code, account number and the legal beneficial owner,
2. Bank statements for all UK accounts listed at point 1,
3. Details of all credit cards held to include the name of the provider, the account number, the date the credit account started and closed,
4. Credit card statements for all accounts listed at point 3
5. Detail of Mr David Hackmey’s funds that have been brought into the UK, to include the amounts and dates of transfer,
6. An explanation as to whether the amounts referred to in point 5 above, are not liable to UK tax or if considered taxable, where they are detailed in Mr David Hackmey’s Self-Assessment returns,
7. Detail where the remittances were received to include the name of the bank, the account name, sort code and account number,

8. What monetary gifts in excess of £10,000 have been received, to include name of donor, date of receipt, amount, frequency and source. Further providing appropriate supporting bank statements,

9. Detail any inheritances or windfall amounts received or remitted to the UK to include dates and amounts.

10. [Removed]

11. Please confirm whether or not Mr David Hackmey is/was a settlor, trustee or beneficiary of any trusts, either in the UK or abroad. If so, please provide details of the Trust/settlement, the name of the settlor and details of any property held for his benefit.

## **BACKGROUND**

6. In 2007 Mr Hackmey moved to the UK. In support of his application for a residence visa, he confirmed that:

- (a) he already had over £2m in a UK bank account;
- (b) he would be able to maintain and accommodate himself and any dependents without taking employment other than self-employment or business; and
- (c) he managed his family's investment and real estate portfolios worldwide and would continue to do so.

7. Since 2007 Mr Hackmey has been resident in the UK for tax purposes, but domiciled outside the UK. He has elected to be taxed on the remittance basis – in other words he is liable to UK income tax on income which has its source in the UK. He is liable to income tax on non-UK source income only to the extent that such income is remitted (or deemed to be remitted) into the UK. Unremitted non-UK source income is outside the scope of UK income tax.

8. Included in the hearing bundle was a CV for Mr Hackmey. Its provenance is not wholly clear, but it possibly was prepared in connection with a loan application made in respect of a property development that was to be project managed by Mr Hackmey's company, Circleplane Limited ("Circleplane"). Mr Henstock referred to this CV in his evidence. Mr Howard did not challenge the accuracy of the CV during the course of his cross-examination of Mr Henstock. I therefore find that it represents a reasonably accurate statement of Mr Hackmey's employment and business activities.

9. The CV shows that Mr Hackmey spent several years working for the Israel Phoenix Insurance Company, which was majority owned by Mr Hackmey's father and sister. Following the sale of their interest in Israel Phoenix Insurance Company in 2002 for US\$313m, Mr Hackmey worked in investment banking, and - from 2004 to 2005 - as a manager of the Hackmey family's real estate interests, comprising properties throughout Europe, Central America and the United States, including "a UK income producing portfolio yielding circa 14m GBP per annum". Mr Hackmey is described as being, since 2007, the investor and owner of Circleplane which "manages UK real estate assets and projects for off shore investors (mainly Hackmey family trusts and partners)". The company is described as managing an income producing portfolio and assets for potential development of *circa* 2m sq ft. The CV describes the Hackmey family as having invested in real estate projects in the UK over many years and provides summaries (with photographs) of eight such projects.

10. Mr Hackmey has been the sole shareholder of Circleplane since 2007. It is a UK incorporated and tax resident company engaged in managing UK real estate projects, in particular in respect of UK real estate projects owned through non-UK resident companies linked to Mr Hackmey and his family. It is convenient to describe the owners of these projects

(being members of the Hackmey family, their trusts, companies, and partners) as the “Hackmey Family Interests”.

11. Mr Hackmey is also the sole shareholder of West End Capital Finance Limited (“WECF”). This company is also UK incorporated and tax resident. It is engaged in the provision of finance for property projects.

12. Mr Hackmey is a director of both Circleplane and WECF.

13. Mr Hackmey has never received any dividends or employment income from either of Circleplane or WECF.

14. In his witness statement, Mr Henstock described the following as the issues that led to HMRC’s investigations (including the issue of the Information Notice):

(1) For the tax years 2006/7 to 2012/13, Mr Hackmey declared UK bank interest as his only source of income. For the tax years 2013/14 to 2015/16, Mr Hackmey returned no taxable income on his UK self-assessment tax return, and paid the only £30,000 remittance basis charge for UK resident but non-domiciled individuals;

(2) From June 2008 to December 2012 Mr Hackmey rented his home, and paid over £1.1m in rent in aggregate;

(3) In December 2013, Mr Hackmey purchased a home for £9.7 million and paid Stamp Duty Land Tax of £679,000; and

(4) Mr Hackmey is the sole shareholder of Circleplane, a company that appears to have been involved in several highly profitable projects without declaring a profit. Although apparently insolvent, Circleplane has been able to continue to trade as a result of loans made to it by Mr Hackmey, and as at 31 March 2017 the outstanding balance was over £1.2m. Circleplane Limited has provided project management services to a number of offshore companies linked to Mr Hackmey and his family members.

15. HMRC’s initial perception was that Mr Hackmey’s lifestyle was inconsistent with his declared income and gains. They therefore suspected that Mr Hackmey had received undeclared income and was engaged in tax fraud. On 13 June 2017, HMRC wrote to Mr Hackmey saying that they suspected him of committing tax fraud and inviting him to make use of the Contractual Disclosure Facility under HMRC’s Code of Practice 9 (COP9).

16. On 17 August 2017 Mr Hackmey’s then agent, Gary Gardner of Blick Rothenberg, wrote to HMRC in response to the COP9 invitation and asked that HMRC provide details regarding the suspicions that led to the COP9 invitation. In his letter Mr Gardner:

(1) noted that number of relatively small (less than £500) remittances had been identified which – due to an unintentional oversight - had not been declared but were potentially taxable. These were payments made in respect of goods and services in the UK through an American Express card account held outside the UK;

(2) acknowledged that there was an “apparent discrepancy between the modest levels of income reported in [Mr Hackmey’s] UK tax returns and his lifestyle. For example, he owns a home in London and drives relatively high value vehicles.”; but

(3) his lifestyle was supported by the receipt of substantial and regular gifts from his father, Joseph Hackmey, in the region of £1 million per year.

17. Correspondence between HMRC and Blick Rothenberg followed, and on 23 May 2018 HMRC wrote to Blick Rothenberg with request for information and documents. Blick Rothenberg responded on 26 July 2018 stating that HMRC were not entitled to the information and documents requested and refusing to supply them.

18. On 18 September 2018 HMRC issued the Information Notice, and on 18 October 2018 BCL Solicitors LLP, acting for Mr Hackmey, lodged an appeal against the Information Notice.

19. On 30 November 2018, Blick Rothenberg accepted HMRC's offer of a statutory review of the Information Notice.

20. HMRC's review conclusion letter was issued on 24 January 2019. The decision of the reviewing officer was that an ambiguity in the period to which the Information Notice refers needed to be eliminated, and so the notice was varied to make it clear that it was restricted solely to the period from 6 April 2013 to 5 April 2017. In consequence, one item was removed altogether from the scope of the notice.

21. The appeal against the Information Notice was notified to the Tribunal on 12 February 2019. The appeal was then stayed to allow HMRC and Blick Rothenberg to see if it was possible to negotiate a settlement. In consequence of those negotiations, Blick Rothenberg provided a variety of information to HMRC on 18 October 2019, including:

- (1) Particulars of UK bank accounts and the offshore bank account used to fund Mr Hackmey's life in the UK;
- (2) Copies of redacted bank statements for the UK bank accounts, and redacted statements of Mr Hackmey's account with UBS in Switzerland (the latter redacted so that it shows only the receipts of funds from Joseph Hackmey and their onward transfer to Mr Hackmey's UK bank account);
- (3) Details of UK credit cards;
- (4) Copies of redacted statements for the UK credit cards;
- (5) Details of the funds that have been brought to the UK by Mr Hackmey, including copies of redacted American Express statements showing the inadvertent remittances; and
- (6) Confirmation that Mr Hackmey is not a settlor or trustee of any trust. Confirmation that he is a discretionary beneficiary of the Notting Hill Discretionary Settlement, from which he had received a distribution outside the UK in 2015.

22. On 17 January 2020, HMRC opened an enquiry under s9A, Taxes Management Act 1970 ("TMA") in respect of Mr Hackmey's 2017/18 self-assessment tax return. On 7 February 2020 HMRC wrote to Blick Rothenberg stating that they intended to apply to the Tribunal for an information notice in respect of information and documents relating to the 2017/18 tax year, and on 14 February HMRC wrote to UBS (the bank which lent funds to Mr Hackmey in respect of the purchase of his home in December 2013) stating their intention to apply for an information notice in respect of Mr Hackmey's mortgage. Chancery Court Tax Chambers (Mr Hackmey's current representatives) provided representations in respect of both of these proposed information notices by letters dated 13 March 2020 and 19 July 2020. On 10 July they wrote a long letter to Mr Henstock setting out additional details relating to Mr Hackmey and enclosing further copies of UK bank statements, copies of non-UK bank statements which were redacted to a lesser extent than those previously provided, and copies of documents relating to his mortgage application.

23. On 31 July 2020 Chancery Court Tax Chambers provided:

- (a) a letter from Joseph Hackmey dated 29 July 2020, confirming that he (Joseph Hackmey) had made gifts to his son, Mr Hackmey, totalling £9,130,000 between 1 January 2013 and 31 March 2018. He confirmed in addition that he had acted as a

guarantor of a mortgage of over £5.7m. He also confirmed that he had made substantial gifts to each of his other children over this period; and

(b) a letter from Askenazy & Co CPA (Israeli accountants to Joseph Hackmey) confirming that between 1 January 2013 and 31 March 2018 Joseph Hackmey had transferred £9.13m to his son David Hackmey, that the amounts represented pure gifts and were not repayable, and that no part of the gifts represented any form of reward. Further the gifts did not cause a significant reduction in the wealth of Joseph Hackmey.

24. On 26 March 2020, HMRC raised protective income tax assessments for the 2013/14 and 2015/16 tax years.

25. On 27 July 2020, HMRC notified the Tribunal that the stay in respect of the Information Notice appeal had expired and sought directions to progress Mr Hackmey's appeal to this hearing.

26. In the meantime, another panel of this Tribunal heard HMRC's application for the information notices relating to 2017/18. Mr Henstock's evidence was that the Tribunal authorised the issue of those information notices, but in the light of Mr Hackmey's appeal against the Information Notice, the 2017/18 notices were varied to have a more limited scope than sought by HMRC.

27. In addition to the investigations undertaken by HMRC into Mr Hackmey's affairs, HMRC have also investigated real estate projects at 20 Blackfriars Road ("Blackfriars") and at Davis House, Victoria ("Victoria"). HMRC have also opened enquiries into both Circleplane and WECF's corporation tax returns.

28. In consequence of all of these investigations and enquiries, and the information provided by Mr Hackmey, HMRC have ascertained that

(1) Mr Hackmey fulfilled the obligations of a director of Circleplane either himself, or through a BVI company called DH Consulting Services Limited. DH Consulting Services Limited was a corporate director of Circleplane until January 2018.

(2) the accounts of Circleplane show that between 2011 and 2019 Mr Hackmey had lent £1.4m to the company. From 2007 to 2017, Circleplane declared a loss in every year except 2008 and 2014, but it remains a "going concern" due to the "facilities available from its shareholders". Mr Hackmey is the only known shareholder. The accounts show that no dividend has ever been paid.

(3) Blackfriars was purchased by Blackfriars Limited (a Guernsey incorporated company) for £90m in July 2007. Its shareholders were two BVI companies ("O" and "P"). The shares in the BVI companies were owned by two discretionary trusts – the Southwark Partners Discretionary Settlement and the Clapham Investment Trust. Mr Henstock had seen accounts of the Clapham Investment Trust ("CIT") which included the shareholdings in "O" and "P". Mr Hackmey believed that the Clapham Investment Trust (through its shareholdings) had a 50% beneficial interest in Blackfriars.

(4) The beneficiaries of the Clapham Investment Trust include Joseph Hackmey's children, and therefore includes Mr Hackmey.

(5) In 2014 it was reported in the press that O and P had sold their shareholding in Blackfriars Limited to Black Pearl Limited (a Guernsey company jointly owned by Hackmey Family Interests and by unconnected Malaysian investors). The reports in the press state that Black Pearl Limited had assumed a £49m loan from P, and had discharged £65m of bank debt owed to the Irish National Asset Management Agency ("NAMA").

Mr Henstock believes that the consideration paid for Blackfriars was effectively £114m. A profit and loss account for Blackfriars Limited was included in the bundle – but its provenance was not given. This shows interest having accrued to P and an accounting profit of £46.5m arising in Blackfriars Limited at the time the shares were sold – but it appears that much of that accounting profit arose in consequence of a waiver by NAMA of a portion of the amounts owed to it.

(6) Mr Hackmey was engaged (through Circleplane) in a wide variety of tasks relating to Blackfriars – ranging from dealing with a burst pipe to planning and design issues. Mr Hackmey would spend between 10 and 40 hours per week on these matters.

(7) The headlease of Victoria was purchased by Castlet Holdings Limited for £17.8m in November 2013. This purchase was funded in part by a loan from HSBC of £11.3m. HSBC have provided HMRC with documents relating to this loan as a result of HMRC’s third party enquiries. From the documents provided by HSBC, it appears that CIT holds or held a 47.5% interest in a Jersey limited partnership, and that limited partnership held a 50% interest in Castlet Holdings Limited. Shortly after acquiring the headlease, Castlet Holdings Limited granted a sub-lease of Victoria to its wholly owned subsidiary, Silver Rose Developments Limited (“SRD”), a BVI company. The premium payable for the grant of the sub-lease was £22.15m. Mr Henstock believes that Castlet Holdings Limited made a profit of £3.6m in consequence of the grant of the sub-lease.

(8) SRD developed the property into flats, which were sold between 2014 and 2016 for an aggregate of £29.5m. BMOR Limited was the project manager for this development.

(9) The redacted UK bank statements provided to HMRC by Mr Hackmey show the following two deposits into his UK bank account:

<i>Date</i>	<i>Description</i>	<i>Amount</i>
07/10/2016	Bmor Ltd Jaytray Ltd	£10,000
07/10/2016	Bmor Ltd Jaytray Ltd	£50,000

Mr Henstock’s evidence was that Jaytray Ltd was linked to one of the directors of BMOR Limited. He confirmed that he had not asked Mr Hackmey about these deposits, but he considered that they give rise to a reason to suspect an understatement of taxable income.

(10) On 13 December 2013 a deposit of £150,000 was made into Mr Hackmey’s UK bank account by Nicholas & Co (a firm of solicitors). Mr Henstock was not able to reconcile this payment with the gifts made by Joseph Hackmey. Mr Howard submits that this payment relates to the purchase by Mr Hackmey of his home which completed on 16 December 2013. Nicholas & Co were instructed by Mr Hackmey on the purchase, and he transferred £4.8m into their client account on 12 December 2013 on account of the purchase price and disbursements. Mr Howard submits that the £150,000 represents an excess which was returned to Mr Hackmey. Mr Turnbull submits that this payment may have been related to the Victoria transaction, the purchase of which (and the grant of the sub-lease to Castlet Holdings Limited) occurred in November 2013, and on which Nicholas & Co were also instructed.

(11) Circleplane was engaged as project manager of both Blackfriars and Victoria. But it has not made profits. Mr Hackmey has not received any earnings from Circleplane in respect of the work he has done for that company. Circleplane has not paid any dividends.

(12) WECF was described by its tax accountants as being in the business of providing finance to property developers and investors in the UK. A spreadsheet showing WECF’s

creditors was provided by those accountants in response to HMRC's investigations. This shows loans of £6.4m from CIT and £1.37m from Glitter Ray Limited. Mr Henstock believes that Glitter Ray Limited is a BVI company owned by Mr Hackmey's mother. Mr Henstock considered that the funds lent to WECF by CIT and Glitter Ray Limited may have been derived from the sale proceeds of Victoria, and he suspected that the movement of funds from CIT to WECF could represent taxable remittances to Mr Hackmey because he is a beneficiary of CIT and the sole shareholder of WECF.

(13) WECF is a profitable company, but Mr Hackmey has received no income in respect of it (whether by way of earnings or dividends).

29. In the time that has passed since this appeal was notified to the Tribunal, the items included within the scope of the Information Notice (as varied) that remain outstanding have narrowed – either because Mr Hackmey has provided the item to HMRC, or HMRC have agreed that the item is no longer required. By the time of the hearing, the only items remaining for the Tribunal to consider were:

(1) Particulars of all personal non-UK bank accounts held legally or beneficially by Mr Hackmey alone or with any other person that he has had the power to operate between 6 April 2013 to 5 April 2017. (Item 1)

(2) Redacted statements have been provided for all UK bank accounts detailed under point 1, but HMRC seek unredacted versions (Item 2).

(3) Details of all non-UK credit cards held by Mr Hackmey (Item 3)

(4) Statements for all non-UK credit cards held by Mr Hackmey, and redactions to be removed from all UK credit card statements (item 4)

(5) Confirmation as to whether Mr Hackmey is or was a beneficiary of any trusts, either in the UK or abroad, regardless of having received any distribution therefrom. If so, he is asked to provide details of the Trust/Settlement, the name of the settlor and details of any property held for his benefit (Item 11).

30. The information and documents within items 5, 6, 7, 8, and 9 have either been provided or are no longer being pursued by HMRC. Item 10 was deleted from the Information Notice as a consequence of HMRC's review.

#### **THE LAW**

31. Extracts from Schedule 36 are set out in the Appendix to this Decision. In summary, for the Information Notice to be valid, the information and documents sought by the notice must be "reasonably required" by HMRC for the purposes of checking Mr Hackmey's tax position (paragraph 1. Schedule 36).

32. As Mr Hackmey has filed self-assessment tax returns for the periods within the scope of the Information Notice, paragraph 21 additionally requires that at least one of "conditions A to D" are met. The condition relevant to the Information Notice is condition B. This requires that an HMRC officer "has reason to suspect" that (in essence) Mr Hackmey has not been assessed (including self-assessed) to enough tax, or that an assessment is insufficient.

33. Mr Hackmey appeals against the Information Notice on the grounds (at least as regards the outstanding items) that either

(1) HMRC has no reasonable basis for suspecting any tax insufficiency, or

(2) even if there is such a reasonable basis, the information and documents sought are not reasonably required in order to check Mr Hackmey's tax position.

### ***Burden of proof***

34. Although the law is not wholly clear, the parties have agreed that the burden of proof rests on HMRC to satisfy me that these requirements have been met, and I agree that this is probably the better view of the legislation: see, for example, the decision of Judge Nicholl in *Cliftonville Consultancy* [2018] UKFTT 231 (TC) and that of Judge Vos in *Hargreaves* [2021] UKFTT 80 (TC).

35. It is not disputed that the role of the Tribunal in this appeal is not supervisory, rather this is a full appellate hearing (see *Sarah Duncan* [2018] UKFTT 296 (TC) at [51]) and the Tribunal has to come to its own conclusion that:

- (1) an HMRC officer has a reasonable basis for suspecting a tax insufficiency, and
- (2) the information and documents sought are reasonably required in order to check Mr Hackmey's tax position (see *Hargreaves* at [55]).

In reaching its decision, the Tribunal must take account of all matters that have come to light since the Information Notice was issued – so I need to determine not whether there was a reasonable basis for HMRC to be suspicious of Mr Hackmey's level and source of income in 2018 when the Information Notice was issued, but whether there is a reasonable basis for suspicion today (in light of all the evidence before me – including material subsequent to the date of issue of the Information Notice), and if so, whether the information and documents sought remain reasonably required.

### ***Reason to suspect***

36. That the requirement for an HMRC officer to have “reason to suspect” sets a low bar, is not in dispute. In *Newton* [2018] UKFTT 513 (TC), Judge Thomas considered that it was set at about the same height as that for an officer to make a “discovery” under s29(1) TMA:

50. Paragraph 21(6) Schedule 36 containing Condition B is closely related in its wording to s 29(1) TMA, which used the word "discover" rather than "has reason to suspect". To make a "discovery" is to surmount a relatively low bar and we consider that "reason to suspect" sets the bar at around the same height. There is ample authority that the similar phrase "has reasonable grounds for suspicion" sets a low hurdle see e.g. *Michael Parker (aka Michael Barrymore) v Chief Constable of Essex Police* [2017] EWHC 2140 (QB) (Stuart Smith J) at [33] citing *inter alia* the House of Lords decision in *O'Hara v Chief Constable of the RUC* [1996] AC 286 ("*O'Hara*").

37. I disagree with Judge Thomas that the bar for reasonable suspicion is set at about the same height as that for making a discovery. In the case of a discovery, the officer must believe there to be – rather than merely suspecting - an insufficiency of tax. “Belief” sets a higher bar than mere “suspicion” (see *Jerome Anderson v HMRC* [2018] UKUT 0159 (TCC) at [28] – not cited to me). So, I find that the bar in Paragraph 21(6) is set somewhat lower than the bar for a “discovery”. But on any basis, that bar is low.

38. Judge Thomas went on to consider the power of the predecessor to the National Crime Agency to take over the taxing functions of HMRC under s317 Proceeds of Crime Act 2002. This requires the agency to have “reasonable grounds to suspect” that a person's income arises from criminal conduct:

52. In *Khan v Assets Recovery Agency* [2006] UKSpC 523, the Special Commissioners, Judge Stephen Oliver QC and Mr Theodore Wallace, said in their conclusions of s 317:

"The qualifying condition under section 317(1) of 'reasonable grounds to suspect' does not involve proof of criminal conduct but a genuine suspicion which is reasonable viewed objectively, see *O'Hara* (para 36 to 39)"

53. Earlier they had referred to the skeleton argument of counsel for the appellant in that case. They then said:

"Whether the qualifying condition has been satisfied in the present circumstances will ultimately depend on the evidence from Mr Archer [of the ARA]. *But if his evidence were to embody the matters set out in the above extract*, our provisional reaction is that the qualifying condition would be more than satisfied." [our emphasis]

54. What is important about this extract is the stress on the evidence and that can also be seen in *Barrymore* and *O'Hara*.

55. As to cases on Condition B in paragraph 21 Schedule 36 we note *Kevin Betts v HMRC* [2013] UKFTT 430 (TC) (Judge Rachel Perez and Lesley Stalker). In that case it was accepted by both parties that HMRC had the burden of showing that any of the conditions in paragraph 21 were met. It was only Condition B that was in issue, and it is clear that a great deal of evidence was given by the HMRC investigator to seek to explain why he had reason to suspect omission of income.

56. Other cases where Condition B was in point and where evidence was given by an officer of HMRC include *Nijjar v HMRC* [2017] UKFTT 726 (TC) at [15] (Judge Jonathan Richards) and *Spring Capital Ltd v HMRC* [2016] UKFTT 246 (TC) at [49] to [54] (Judge Barbara Mosedale).

39. The requirement for reasonable grounds was also considered by Judge Gething in *Perring* [2021] UKFTT where she said at [19](1) that:

the requirement that an Officer has reasonable grounds to suspect that an assessment has become deficient requires not only that the Officer to have formed that view but in addition that it must also be objectively reasonable to hold that view and that means that there must be some evidence to indicate a deficiency in relation to each year in respect of which the notice has been issued.

40. I find that the requirement for the suspicion to be based on "reasonable grounds" means that this suspicion must have an objective basis. In order for HMRC to meet the burden of proof as regards Condition B, not only must they share the grounds for their officer's suspicion, but they must provide evidence demonstrating that the officer is entitled to have that suspicion and that it is objectively reasonable for him or her to have it.

### ***Reasonably required***

41. One of the issues in this Appeal in respect of the "reasonably required" test relates to information and documents for the tax year 2013/14. This is more than four years before the date of the Information Notice (18 September 2018). The general rule (s 34(1) TMA) is that income tax may not be assessed more than four years after the end of the year of assessment for which the income is taxable. There are exceptions to this general rule, in particular the provisions of s29 TMA relating to "discovery assessments". These provisions allow (subject to various conditions being met) HMRC to issue an assessment within six years in cases where HMRC make a "discovery", and the loss of tax has arisen because of the carelessness of the taxpayer.

42. In his submissions, Mr Turnbull noted that paragraph 1 provided that a notice could be issued if the information and documents were required for the purposes of "checking the taxpayer's tax position", and that "tax position" was defined by paragraph 64 to include the

taxpayers “past, present and future” tax liabilities. In consequence, he submitted that HMRC were not barred from requiring information and documents relating to periods which might be out of time for assessment. He referred me to the Tribunal’s decision in *Cowan* [2013] UKFTT 604 (TC), where the periods for which HMRC required information were time-barred for assessment in support of his submission. However, one of the issues in *Cowan* was the residence status of the taxpayer, and HMRC contended (and the Tribunal agreed) that the information sought was relevant to the residence status of the taxpayer for the periods for which HMRC were not time barred. This is because, for example, the number of days spent in the UK by an individual in year one could be relevant to their UK residence status in year two. I agree with Mr Howard that *Cowan* does not provide blanket authority for HMRC to seek information and documents relating to periods that are time-barred for assessment.

43. However, I find that HMRC are not barred from requiring information and documents for 2013/14 providing they have a reasonable basis for suspecting that they could make a discovery assessment for that period, and that the information and documents are otherwise reasonably required. In *Perring* (at [26] to [27]), Judge Gething said that the purpose of the Schedule 36 information powers is to enable HMRC to raise assessments to collect tax. It must then follow that it cannot be reasonable for HMRC to require documents and information that relate to a period for which HMRC are out of time to raise assessments. She went on to say at [29]:

29. In our view, in the absence of a discovery, which requires evidence of an assessment being an under assessment, or compelling mismatches of income and expenditure, it would be unreasonable for an Officer to issue an information notice for a tax year in respect of which no enquiry has been made and therefore no assessment may be made. A desire for background information is not sufficient to justify the issue of an information notice. An information notice cannot therefore be issued in respect of:

- (1) 2012/13 as that is more than 6 years prior to the issue of the notice, and in the absence of dishonest conduct, no assessment can be made.
- (2) 2013/14 as there was no evidence to amount to a discovery to justify an assessment under section 29 TMA.

44. In my view, what Judge Gething says at [29] is expressed too narrowly – I disagree that the officer must have already made a “discovery” before the issue of an information notice can be justified. In his skeleton argument, Mr Howard submits that

In relation to period 2013/14 HMRC must also have objective evidence of a reasonable suspicion of a careless or dishonest under-assessment to tax; and the material must be reasonably required to establish this.

I broadly agree with Mr Howard’s submission – but I would express it slightly differently. I find that, in the circumstances of this case, as regards 2013/14, HMRC must have reasonable grounds (based on evidence) to suspect an insufficiency of tax for 2013/14 due to carelessness, and that the information and documents sought by the Information Notice are reasonably required to determine whether this is in fact the case.

45. I agree with Judge Gething that a mere desire for background information is insufficient to justify the issue of a notice – that would amount to “fishing” (see also *Avonside Roofing* [2021] UKFTT 158 (TC) at [62] – [68]).

## THE INFORMATION SOUGHT

46. I found Mr Henstock to be a credible and reliable witness, and there was no challenge by Mr Howard to the truthfulness of Mr Henstock's evidence. I find that he answered questions honestly and to the best of his ability.

47. When HMRC commenced their investigations into Mr Hackmey's affairs, they had – as acknowledged by Gary Gardner in his letter of 17 August 2017 – a legitimate suspicion of undeclared income because of the discrepancy between Mr Hackmey's lifestyle and the level of income reported in his UK tax returns.

48. What became clear during the course of Mr Henstock's oral evidence was that HMRC's initial suspicions were no longer in point following Gary Gardner's explanations (and the various documents and explanations subsequently provided to them). Mr Henstock confirmed that at the outset of HMRC's investigations, they had suspected fraud, but that they now accepted that Mr Hackmey was funded by transfers of cash from his father. Mr Henstock also acknowledged that publicly available information confirmed that Joseph Hackmey was extraordinarily wealthy and had the means to be able to make substantial gifts to his son and other children without having any material adverse impact on his own overall lifestyle.

49. In consequence, the focus of HMRC's investigation had changed, and could be described as falling primarily into investigating two issues. The first issue (which Mr Howard described as the "quantum issue") relates to the amounts

(a) remitted by Mr Hackmey into the UK, but not declared on his UK tax returns. That failure to declare is described by Mr Howard as being due to an unintentional oversight; and

(b) transferred to Mr Hackmey by his father by way of gift.

50. The second issue was described by Mr Howard as the "taxability issue". This includes the relationship Mr Hackmey has with Circleplane and WECF, and the fact that he does not appear to have received any income from these companies. HMRC suspect that Mr Hackmey is being remunerated for the work he does in the UK – whether in his capacity as a director or otherwise in relation to Hackmey Family Interests – and that he should have paid UK tax on this remuneration. One area that HMRC are considering (described by Mr Henstock in his evidence as being of "central concern") is that all or part of the funds transferred to Mr Hackmey by his father represent such taxable remuneration. HMRC are also considering the potential application of anti-avoidance legislation (such as, but not limited to, the legislation relating to transfers of assets abroad).

51. Mr Howard submits that as regards the quantum issue, HMRC no longer have any reasonable grounds for suspecting that the amounts declared by Mr Hackmey as having been remitted into the UK are inaccurate.

52. He submits that as regards the taxability issue, the information sought by HMRC is not reasonably required for the purposes of checking Mr Hackmey's tax position.

53. A central focus of HMRC's enquiries is the relationship of Mr Hackmey to the real estate projects connected with Circleplane, WECF, and the Hackmey Family Interests. HMRC note that Mr Hackmey is not receiving income from either WECF or Circleplane (whether by way of dividends or earnings). They note that Circleplane does not appear to be profitable. They speculate whether all or some of the funds received by Mr Hackmey in the UK ought properly to be regarded as taxable remuneration, or whether Mr Hackmey is, in substance, being remunerated outside the UK for work he does in the UK.

54. Mr Howard acknowledged that HMRC might legitimately want to investigate the nature of the arrangements between Mr Hackmey and the Hackmey Family Interests and the potential application of anti-avoidance provisions (such that the legislation relating to the transfer of assets abroad). But he submitted that none of the items included within the Information Notice addressed these “taxability issues”. Much of Mr Howard’s cross-examination was concerned with demonstrating that HMRC’s current concerns were outside the scope of the items in the Information Notice. Mr Henstock acknowledged that HMRC had raised no questions, for example, which might relate to transfer pricing issues – whether the fees charged by Circleplane to its clients were anything other than arm’s length.

55. Nor had Mr Henstock included in the Information Notice questions been about the nature of the deposits into Mr Hackmey’s bank account by Nicholas & Co and BMOR Limited. Although these deposits were unexplained, Mr Henstock confirmed under cross-examination that he had not asked any questions about their nature. Mr Howard made cogent submissions as to why these payments related to Mr Hackmey’s purchase of a house for himself and were a return of capital respectively – but these submissions were not supported by detailed evidence, so I make no findings in this regard.

56. Great emphasis was placed by Mr Turnbull on the Blackfriars Limited profit and loss account – and the fact that it appeared to show that a profit of £46.5m having been made in 2014/15 by Blackfriars Limited. However, the provenance of that account is unclear, and much (if not all) of the profit appears to arise as a result of loan waivers by NAMA (which Mr Howard submits would suggest that the project was not profitable – as NAMA would not have waived any of its debt if it were). All that said, the profit and loss account provides evidence to support HMRC’s suspicions that there may be some untaxed profits relating to the Blackfriars project which arose outside the UK, and I can understand why HMRC may want a better understanding of the various line items shown in the accounts. However, none of the items in the Information Notice are directed at these issues.

57. Under cross-examination, Mr Henstock’s response to a number of Mr Howard’s questions indicated that whilst it might have been reasonable to seek much of the information and documents set out in the Information Notice in the light of HMRC’s reasonable suspicions in 2017 (at the start of their investigations) and in 2018 (when the Information Notice was issued), that no longer remained the case in the light of the information provided since then, and in the light of the change of focus in HMRC’s investigations. This can be seen from the answers given by Mr Henstock to Mr Howard’s questions – such as confirming that a particular matter was not within the scope of his witness statement, that he “struggled to give an answer” as to why HMRC had not asked a particular question, or that a matter could have been expressed better in his statement.

58. I agree that HMRC may well have reasonable grounds to suspect that Mr Hackmey may not have declared all of his UK taxable income – and Mr Howard in essence concedes that Mr Hackmey’s affairs are complicated and there are matters as to which HMRC may well have legitimate questions to ask. However, what HMRC have largely failed to do in relation to the Information Notice is to “join the dots” and link the documents and information they require to their reasonable suspicions. I can only speculate whether the outcome of this appeal would have been different if HMRC had prepared their case with more care, or had varied or replaced the Information Notice to reflect the changed focus of their investigations.

59. It is convenient to deal with each of the items in the Information Notice in turn.

***Item 1***

60. This item is no longer being pursued by HMRC.

## ***Item 2 – Unredacted UK bank statements***

61. Mr Henstock’s evidence is that the movement of funds from Mr Hackmey’s bank accounts in Switzerland into the UK, and their subsequent “introduction” to Circleplane is “central to HMRC’s concerns”. In his witness statement he says:

HMRC considers it reasonable to investigate the extent to which any other spending from personal accounts, for example on behalf of UK or offshore corporates, may be pertinent to the risk that those funds, paid in to an ostensibly personal bank account in the UK, may be earmarked or intended to subsidise or support the Appellant’s family business operations. Evidence of personal spending is also relevant to the risk that the Appellant does not have the means to support his suspected spending in the UK and the credibility of the claim that the significant deficit of funds would be filled through parental gifts rather than reward for services provided in respect of property investments. Evidence of the onward payment of funds is also requested to test the risk that anti avoidance provisions.

62. Mr Henstock was questioned at length by Mr Howard about the information already provided to him, whether he accepted its veracity, and why he needed to see unredacted UK bank statements.

63. Mr Henstock said that he was satisfied that Mr Hackmey had disclosed all gifts made to him by his father. He agreed with Mr Howard that there was no evidence of there being any covert or undisclosed payments. Mr Henstock confirmed that he had seen the entries in the bank accounts showing the amounts transferred from overseas into Mr Hackmey’s UK bank account, but he wanted to know whether these amounts were paid exclusively by Joseph Hackmey. He also confirmed that he had no reason to believe that either Joseph Hackmey or Askenazy & Co had lied in their July 2020 letters. Mr Henstock’s said that his only reason to question the amounts is an inability to reconcile a deposit of £150,000 into Mr Hackmey’s UK bank account on 13 December 2013 by Nicholas & Co, and two deposits made on 7 October 2016 of £10,000 and £50,000 respectively, which are described as “Bmor Ltd, Jaytray Ltd”.

64. Mr Turnbull submits that the Item 2 information is reasonably required in order to determine the source of funds paid to Mr Hackmey and to determine whether the amounts declared as paid to Mr Hackmey by way of gift are accurate. The statements need to be unredacted to show the flow of funds from Joseph Hackmey to Mr Hackmey, and this will evidence whether there is any artificiality in the nature of those payments. The statements will also show the connections between Mr Hackmey and the Hackmey Family Interests – and whether Mr Hackmey is being paid for managing the Hackmey Family Interests. As regards the BMOR Limited and Nicholas & Co payments, the disclosure of unredacted statements will show why the funds were deposited into the account and whether there was any corresponding withdrawal – and this information would help to establish whether these payments gave rise to unassessed tax.

65. Mr Howard submitted that HMRC no longer had any grounds for suspecting that the amounts disclosed by Mr Hackmey as having been transferred into the UK are incorrect. Whether Mr Hackmey introduced funds into Circleplane (directly or indirectly) is irrelevant to any determination of his income tax position. Providing Mr Hackmey pays the relevant amount (if any) of UK tax on his UK and remitted overseas income, how he chooses to spend that money is irrelevant to his UK income tax position. To seek that information represents, submits Mr Howard, an unnecessary and unreasonable intrusion into Mr Hackmey’s private life contrary to his Article 8 ECHR rights. Because the redacted statements provided to HMRC include running balances, they can see whether the payments in and out of Mr Hackmey’s accounts are large or small – and it remains open to them to make further targeted requests for

information. Providing unredacted bank statements will not provide HMRC with any relevant information relating to HMRC's concerns about the payments from BMOR Limited or Nicholas & Co – if HMRC require additional information about these payments, Mr Howard said that Mr Hackmey would be happy to consider their requests. In summary, Mr Hackmey had already provided HMRC with statements from his personal UK bank accounts which show the amounts received. As none of the redacted information relates to the receipt of funds by Mr Hackmey, the redacted information is not relevant to establishing his UK taxable income - removal of redaction would not assist HMRC to check Mr Hackmey's income tax position as it would assist HMRC neither with the source nor level of his taxable income.

66. I find that HMRC have not established grounds for requiring unredacted UK bank statements. The redacted statements provided by Mr Hackmey show the funds remitted by him into the UK, and Mr Henstock in the course of his oral evidence stated that he did not suspect Mr Hackmey of concealing amounts transferred into the UK. I find that, in the light of the disclosures made by Mr Hackmey prior to this hearing, HMRC no longer has reasonable grounds for suspecting that Mr Hackmey has failed to disclose all amounts transferred into the UK.

67. Neither Mr Turnbull nor Mr Henstock have been able to explain why removal of redactions will assist HMRC in checking Mr Hackmey's tax position as regards the taxability issue. Mr Turnbull submitted that seeing the flow of funds will evidence whether there is any artificiality in the nature of the payments made by Joseph Hackmey to Mr Hackmey – but when I asked him to explain why this was the case, he was unable to do so.

68. HMRC know about the deposits made by BMOR Limited and Nicholas & Co, and there is no evidence of any suspicion relating to other deposits. Rather HMRC central concern that the character of payments of which they are aware has the nature of taxable income. HMRC have not been able to explain why the removal of the redactions relating to payments out of the account will assist them in determining the character of payments made into the account. HMRC are also concerned that payments are being made outside the UK in respect of work done by Mr Hackmey within the UK – or that transfer pricing or other anti-avoidance legislation might be in point. Again – to the extent that these may be relevant avenues for HMRC to investigate, they have not been able to explain why the provision of unredacted bank statements will assist them with these matters.

***Items 3 and 4 – Details of all non-UK credit cards and unredacted copies of all (UK and non-UK) credit card statements***

69. Mr Hackmey had disclosed in response to the receipt of the Information Notice a number of purchases of goods and services in the UK for which he paid using his non-UK credit card. There was some dispute in the course of submissions as to whether this disclosure was entirely voluntary – Mr Henstock described the disclosure as being “prompted” which I think is a fair description. Mr Hackmey has provided HMRC with details of his UK credit cards, and provided redacted copies of his non-UK credit card statements.

70. Mr Henstock's evidence was that the details of all of Mr Hackmey's credit cards was reasonably required by HMRC in the light of his disclosure of untaxed remittances through one of these cards. Mr Henstock considered that it was reasonable to test the risk that the use of non-UK credit cards may have triggered other remittances. During the course of cross-examination, Mr Henstock said that it was HMRC's practice to require taxpayers to provide details of all credit cards (UK and non-UK) and statements in the course of investigations where payments in the UK using non-UK credit cards had been made.

71. Mr Turnbull submits that HMRC required this information and documents to ascertain the correct amount of taxable remittances to the UK, as payments from any credit card could

potentially be a taxable remittance. He repeated Mr Henstock's statement that it was HMRC's usual practice to require sight of overseas credit card statements. He further submits that the links from credit card transactions to projects will also establish whether funding of Circleplane and WECF are linked back to Joseph Hackmey.

72. During the course of his closing submissions, Mr Turnbull mentioned (for the first time) that HMRC believed that Mr Hackmey had incurred expenses in Singapore relating to Victoria using an overseas credit card, which had been reimbursed by SRD. However, Mr Turnbull acknowledged that there was no evidence before the Tribunal in relation to these expenses – it was not mentioned by Mr Henstock in his witness statement nor his oral evidence, nor is there any document in the bundle which refers to these expenses.

73. Mr Howard submits that HMRC have provided no evidence to suggest that Mr Hackmey has made undisclosed purchases in the UK using non-UK credit cards beyond those already disclosed. Nor have they adduced any evidence to support a reasonable suspicion that Mr Hackmey had not made an honest and genuine disclosure of all such purchases, or that the disclosure of such purchases is in any way incomplete. Only the expenditure details have been redacted from the UK credit card statements provided to HMRC – and removing these redactions will not assist HMRC in identifying taxable remittances into the UK. Rather, says Mr Howard, this information is not reasonably required and will in breach of Mr Hackmey's Article 8 rights.

74. I consider that it was inappropriate for Mr Turnbull to introduce new matters into his closing submissions. Be as that may, there was no evidence of any kind before me to support his submission that Mr Hackmey had incurred expenses on behalf of SRD using one of his overseas credit cards – and submissions are not evidence. If such evidence had been provided, I would have found that HMRC would have had reasonable grounds to suspect that there may have been undisclosed remittances made via overseas credit cards, and upheld items 3 and 4 of the Information Notice.

75. The mere fact that HMRC's usual practice is to require disclosure of overseas credit cards does not of itself provide a reasonable basis for seeking those documents in this case. There has to be evidence to support HMRC's submissions, and HMRC must demonstrate why they required the information. In the absence of any such evidence, it follows that I have to find that HMRC had no reasonable grounds to suspect that Mr Hackmey was using his overseas credit card to pay for goods and services on behalf of SRD. In any event, none of the evidence of Mr Henstock, nor any of Mr Turnbull's submissions explains why HMRC needs the removal of the redactions to the UK credit card statements that have been disclosed.

#### ***Items 5 to 10***

76. These are no longer being pursued by HMRC.

#### ***Item 11 – Details of trusts of which Mr Hackmey is a beneficiary***

77. HMRC have made it clear that the information required by this item is limited to information within Mr Hackmey's knowledge, and documents are limited to those within Mr Hackmey's power or possession.

78. The evidence before me is that Mr Hackmey is a discretionary beneficiary of CIT, and that CIT was one of the ultimate beneficial owners of Blackfriars and Victoria. It is not disputed that Circleplane provided services relating to these projects. There is also evidence which indicates that CIT has lent £6.5m to WECF.

79. The CV included in the bundle states that from 2007 Mr Hackmey is "investor and owner" of Circleplane, and that Circleplane "manages UK real estate assets and projects for off shore investors (mainly Hackmey family trusts and partners)."

80. Mr Henstock's evidence was that whilst HMRC had some knowledge regarding trusts used by Mr Hackmey's family, he considered that it was reasonable to gather information regarding those trusts and any others which may have been used to facilitate property transactions in the UK.

81. Correspondence included in the bundle confirms that Mr Hackmey is a discretionary beneficiary of the Notting Hill Discretionary Settlement, and had received a distribution from that trust of £500,000 which was paid into a non-UK bank account. The correspondence also refers to the South London Discretionary Settlement, and that the Guernsey tax authorities had informed HMRC that this was one of the ultimate beneficial owners of Black Pearl Limited and that Mr Hackmey was a discretionary beneficiary of that trust.

82. Mr Turnbull submits that CIT, Notting Hill Discretionary Settlement, and South London Discretionary Settlement were all linked to the ownership of UK property. He noted that these trusts, as well as the Southwark Partners Discretionary Settlement had names which were associated with London districts. As Mr Hackmey was a discretionary beneficiary of a number of these trusts, information relating to trusts was reasonably required for the purposes of checking Mr Hackmey's tax position. Mr Turnbull submitted that there would be "money available to be paid" to Mr Hackmey out of these trusts, and this was relevant to Mr Hackmey's future tax position (see paragraph 64(1)(a)). Further, there was also the issue of whether the amounts lent to WECF by CIT represented a taxable remittance in the hands of Mr Hackmey given his ownership of the WECF shares.

83. Mr Howard notes that Mr Hackmey has confirmed to HMRC that he is not the trustee or settlor of any trusts, and there is no evidence produced by HMRC that casts doubt on the truthfulness of this statement. Mr Hackmey has given details of the distribution made to him by Notting Hill Discretionary Settlement outside the UK, and has also confirmed that he has received no undisclosed benefit from any trust. Whilst HMRC may have identified trusts of which Mr Hackmey may be a potential beneficiary, but as these are discretionary trusts, Mr Hackmey has no defined right to any of these trusts' assets. As regards Mr Turnbull's submission that there was "money available to be paid" to Mr Hackmey, this was not supported by any evidence. And in any event, unless and until Mr Hackmey receives a benefit from a trust, there is no possibility of him being taxable. Requesting details of any worldwide trusts for which he is, or might be a beneficiary of, even though he has not received any benefit from them, is not reasonably required to establish Mr Hackmey's UK income tax position.

84. In contrast to the other information sought by HMRC by the Information Notice, I find that HMRC has "reasons to suspect", and that the information sought by Item 11 is reasonably required for the purpose of checking Mr Hackmey's tax position.

85. I agree with Mr Turnbull, and find, that the fact that the trusts of which HMRC are aware are named after London districts gives HMRC reasonable grounds for suspecting that the trusts have (or had) a connection with property in London. Mr Hackmey's CV and the statement given on his visa application is evidence that he manages family property projects, and so I also find that HMRC have reasonable grounds for suspecting that Mr Hackmey is involved in managing the affairs of trusts associated with the Hackmey family. As Mr Hackmey is known to be a discretionary beneficiary of some of these trusts, it is reasonable to suspect that he is a discretionary beneficiary of other trusts associated with the Hackmey family.

86. Mr Howard acknowledged that HMRC might have legitimate reasons for wanting to investigate the relationships between Mr Hackmey and the Hackmey Family Interests in connection with the potential application of anti-avoidance provisions (such as the transfer of assets abroad). There is evidence before me of complex links between Mr Hackmey and the Hackmey Family Interests – which include CIT's loans to WECF and the ultimate beneficial

interests of CIT in both Blackfriars and Victoria, and of South London Discretionary Settlement's ultimate beneficial interest in Blackfriars. These were projects on which Mr Hackmey worked – albeit through companies owned or controlled by him.

87. I have mentioned the profit and loss account of Blackfriars Limited for 2014/2015 which appears to show a profit of £30.4m on the Blackfriars project. Whilst I acknowledge that these accounts are of uncertain provenance, and that much of the profit shown in the accounts arises as a result of NAMA waiving debt owed to it – I find that it does give rise to reasonable suspicion that there may be profits that have not been appropriately taxed in the UK. It also appears that Mr Hackmey is or may be a beneficiary of trusts that are ultimate beneficial owners of Blackfriars Limited.

88. In the light of the information provided to HMRC, they know, or have reasonable grounds to suspect that Mr Hackmey may be a beneficiary or discretionary beneficiary of family trusts which have invested in UK real estate projects – including, but not limited to, those already disclosed. Mr Henstock mentioned during the course of his evidence the possibility of tax being payable by Mr Hackmey under anti-avoidance legislation (including, but not limited to, the transfer of assets abroad provisions) – and an understanding of the ownership arrangements for the various property projects in which Mr Hackmey may have an interest is reasonable in this context – notwithstanding that Mr Hackmey may only be a discretionary beneficiary of these trusts.

89. I consider that it is reasonable that HMRC are provided with the information and documents relating to Mr Hackmey's status as a beneficiary (including as a discretionary beneficiary) of these and the other Hackmey family trusts.

90. I agree with Mr Howard that Mr Turnbull's submission that "money is available to be paid" to Mr Hackmey is not supported by evidence. But this does not detract from the weight of the other evidence. I therefore find that the information and documents in Item 11 are reasonably required by HMRC.

#### **CONCLUSION**

91. I find that the outstanding matters within Items 2 to 4 of the Information Notice are information and documents in relation to which neither (a) HMRC have reasonable grounds for suspecting that tax has not been assessed (or that the tax is insufficient), nor (b) are such information and documents reasonably required by HMRC for the purposes of checking Mr Hackmey's tax position.

92. Items 1, and items 5 to 9 of the Information Notice have either been satisfied or are no longer being pursued by HMRC. Item 10 has been removed from the Information Notice following the statutory review by HMRC.

93. I find that HMRC have reasonable grounds for suspecting that tax may not have been assessed (or that the tax is insufficient) in relation to the matters within Item 11, and that the information and documents required by Item 11 are reasonably required by HMRC for the purposes of checking Mr Hackmey's tax position.

94. I therefore set aside Items 1 to 10 inclusive of the Information Notice. I confirm Item 11.

**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**Release date: 13 MAY 2022**

**Cases referred to in skeletons but not mentioned in this decision:**

*Joshy Mathew v HMRC* [2015] UKFTT 139 (TC)

*PML Accounting v HMRC* [2015] UKFTT 440 (TC)

*R (oao PML Accounting) v HMRC* [2018] EWCA Civ 2231

**APPENDIX**  
**EXTRACTS FROM SCHEDULE 36**

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

[...]

21(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of, or regulations under paragraph 10 of Schedule A1 to, 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.

[...]

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

[...]

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

(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.

[...]

32(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.

(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

(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.

(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.

[...]

58 In this Schedule—

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

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,

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

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

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

[...]

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

[...]