



Neutral Citation: [2024] UKFTT 00564 (TC)

Case Number: TC09220

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/11268

INCOME TAX AND CAPITAL GAINS TAX – Taxpayer information notice – Schedule 36 to the Finance Act 2008 – Statutory records – Whether information and documents reasonably required to check tax position – Whether in possession or power – Information notice varied

Heard on: 11 March 2024

Judgment date: 27 June 2024

Before

TRIBUNAL JUDGE RACHEL GAUKE

Between

SURAT SINGH SANGHA

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Geraint Jones KC, instructed by Rainer Hughes LLP

For the Respondents: Colin Williams, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. Mr Sangha appeals against an information notice (the Notice) issued by HMRC under Schedule 36 to the Finance Act 2008 (FA 2008) on 13 October 2021, and varied by HMRC on 4 February 2022 following a review. Mr Sangha disputes all the items in the Notice.
2. I have set aside some of the items in the Notice and varied others. The remaining items in the Notice, as varied, are set out in the Appendix to this decision.

HEARING AND EVIDENCE

3. The hearing was conducted by video link on the tribunal's Video Hearing Service. 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 to observe the proceedings. As such, the hearing was held in public.
4. The documents to which I was referred were a 231-page hearing bundle, a 466-page authorities bundle, HMRC's statement of case, and both parties' skeleton arguments. I had witness statements from Mr Sangha and from HMRC's witness, Officer Alastair Andrews. Both witnesses attended the hearing but neither were cross-examined.
5. Prior to the hearing I had been provided with an incomplete version of the bundle, which did not include Officer Andrews' witness statement. The complete version was emailed to me, at my request, at the start of the hearing. On reviewing Officer Andrews' statement after the hearing, I formed the view that the bundle was still incomplete. This was because his witness statement contains a section headed "letters and paperwork referred to in statement", which lists a number of documents referred to by Officer Andrews in his statement. However, several of these documents were not in the bundle.
6. I considered whether I should ask HMRC to resubmit the witness statement with these additional documents, and then invite further submissions from Mr Sangha. I decided that this would not be proportionate. The additional documents could significantly alter the case which Mr Sangha has to answer, meaning that it was likely that there would need to be a further hearing. This would incur costs and involve delay. Moreover, HMRC had ample opportunity to provide the Tribunal with the evidence required to support their case: Mr Sangha's representatives had drawn attention, in their skeleton argument, to a number of areas in which HMRC's case appeared to be lacking in evidence.
7. I have therefore made my decision on the basis of the parties' submissions and the evidence in the bundle that was provided to me in the hearing, with the addition of the witness statement from Officer O'Neil which I describe below.

CASE MANAGEMENT ISSUES

8. An issue arose during the hearing as to whether the witnesses, Mr Sangha and Officer Andrews, would be cross-examined. Mr Williams said that he would like to cross-examine Mr Sangha. Mr Jones said that Mr Sangha had not expected to be cross-examined and did not have a copy of the document bundle to refer to.
9. I asked Mr Williams to tell me the questions he would seek to put to Mr Sangha in cross-examination, so that I could determine whether these were properly directed to the issue that was the subject of the appeal, namely the validity of the information notice.

10. Having heard all the questions Mr Williams wanted to ask Mr Sangha, I took time to consider the matter. I was satisfied that the questions were designed to elicit further information about Mr Sangha's tax position, rather than being concerned with the validity of the information notice. The information Mr Williams sought may have properly been the subject of an enquiry or an information notice, but the purpose of the hearing was not to permit HMRC to conduct an on-the-spot enquiry.

11. I therefore decided not to allow Mr Williams to put his questions to Mr Sangha in cross-examination. Mr Jones said that if Mr Williams did not cross-examine Mr Sangha, he would not seek to cross-examine Officer Andrews. Therefore neither witness was cross-examined.

12. A further case management issue arose towards the end of the hearing. Some of the documents sought by HMRC were more than six years old at the time of the issue of the Notice and so, under FA 2008, Sch 36, para 20, the Notice required the agreement of an "authorised officer".

13. Officer Andrews stated, in his witness statement, that the notice had been approved by an authorised officer, Officer O'Neil, on 6 October 2021. Mr Jones did not challenge this statement in cross-examination, but submitted that it was a mere assertion and that there was no other evidence in the bundle that the necessary approval had been received. Mr Williams said that he had a chain of emails between Officer Andrews and Officer O'Neil which demonstrated that the approval had been received, and asked for permission to produce this email chain to the Tribunal. Mr Jones objected to the emails being adduced as evidence. I said that I would address this matter in directions after the hearing.

14. After the hearing, on 25 March 2024, I issued directions to the parties, directing HMRC to serve a witness statement from Officer O'Neil or such other evidence as HMRC may wish to advance to demonstrate HMRC's compliance with the requirements of paragraph 20, and inviting Mr Sangha's written observations on this evidence. In my directions, I informed the parties that I was not minded to refuse to admit evidence of the fulfilment of a procedural requirement by HMRC, in circumstances where it was within HMRC's power to cure any procedural irregularity, issue a fresh information notice, and restart the course of this dispute, but at the cost of a significant further delay. If Mr Sangha disagreed, I invited him to express this in his written observations.

15. It is unarguable that, if HMRC could not show that the Notice had been approved by an authorised officer, the Notice could not require the production of any documents that were more than six years old at the time of the issue of the Notice. However, if HMRC could show approval by an authorised officer, I did not consider that they should be prevented from obtaining these documents simply because the only evidence put forward at the hearing was Officer Andrews' assertion in his witness statement.

16. In accordance with these directions, I received a witness statement from Officer O'Neil, dated 3 April 2024, stating that he held the role of authorised officer and that he approved the Notice on 6 October 2021. Mr Jones objected to the production of the witness statement on several grounds, but I have decided to admit it, for the reasons that follow.

17. In his post-hearing written submissions, Mr Jones said that it was procedurally irregular for a judge to direct a party to adduce additional evidence to improve its case, and that this is capable of being characterised as apparent bias.

18. I do not accept this submission. Officer Andrews had already given evidence, in his witness statement, that the requirement was satisfied. That statement was not challenged in cross-examination but, having heard Mr Jones's submissions that the statement was

insufficient, HMRC asked to adduce further evidence in the form of a chain of emails. This was a video hearing so it was not possible for this evidence to be handed up as might have happened at a face-to-face hearing. After the hearing I decided that I would prefer to receive this evidence by directing the production of a witness statement, as I am entitled to do under Rule 15(1)(e)(ii) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. In my view a witness statement would be a more reliable form of evidence of the relevant facts than a chain of emails.

19. Mr Jones further submitted that I had erred by describing paragraph 20 as a “procedural requirement” when, according to Mr Jones, it is a substantive requirement or condition precedent. I do not consider there is anything in this point: as with any statutory requirement, paragraph 20 must be complied with. Describing paragraph 20 as a procedural requirement does not change what must be done to comply with it.

20. I also do not accept another submission from Mr Jones, that the only reason I directed the production of the witness statement was that I was not satisfied on the other evidence that the requirements of paragraph 20 had been met. As is common practice in the Tribunal, I reserved my decision at the end of the hearing so that I could reflect on the evidence before reaching my conclusions. I directed the production of the witness statement in response to HMRC’s request to adduce additional evidence that paragraph 20 had been complied with. I then formed my view of the entirety of the evidence, including the statements of Officer Andrews and Officer O’Neil. Having done so I have reached my decision, as set out below.

FINDINGS OF FACT

21. On 26 January 2018, Officer Andrews opened an enquiry under section 9A of the Taxes Management Act 1970 (TMA 1970) into Mr Sangha’s tax return for the year 2015-16. This tax return had been submitted on 31 January 2017. The enquiry opening letter stated that Officer Andrews would be checking that the return was complete and correct.

22. On 13 June 2018, Officer Andrews opened an enquiry under TMA 1970, s 9A into Mr Sangha’s tax return for the year 2016-17. This tax return had been submitted on 31 January 2018. The enquiry opening letter stated that Officer Andrews would be checking Mr Sangha’s income from property and directorships. Officer Andrews also stated that he may need to extend the check, but that if this happened he would let Mr Sangha know.

23. Officer Andrews issued a number of information notices under FA 2008, Sch 36 to Mr Sangha in connection with these enquiries. The Notice that is the subject of this dispute was issued on 13 October 2021.

24. I accept the evidence of Officer Andrews and Officer O’Neil, referred to above, and find as a fact that to the extent that the Notice required the production of documents that were more than six years old, the Notice was given with the approval of an authorised officer within the meaning of FA 2008, Sch 36, para 20.

25. Mr Sangha requested a review of the Notice by an independent HMRC officer. The HMRC officer who conducted this review amended the Notice, removing some items from it. The amended Notice was issued on 4 February 2022. Mr Sangha submitted an appeal against the Notice on 23 February 2022.

26. It was initially HMRC’s case that on 23 December 2020, Officer Andrews opened an enquiry into Mr Sangha’s tax return for the year 2018-19. However, unlike for the years 2015-16 and 2016-17, I was not provided with a copy of the letter under which Officer Andrews opened this enquiry.

27. I asked Mr Williams what evidence there was in the bundle that this enquiry had been opened, and he said there was none. Unlike the question (discussed earlier in this decision) as to whether the approval of an authorised officer had been sought for the purposes of FA 2008, Sch 36, para 20, Mr Williams did not seek to adduce any additional evidence on this point at the hearing. I therefore took HMRC not to be pursuing the point that there was an open enquiry into Mr Sangha's tax return for 2018-19.

BACKGROUND TO THE INFORMATION SOUGHT BY HMRC

28. The information received by Officer Andrews in the course of his enquiries, including information provided by Mr Sangha's agents, led him to identify a number of areas in respect of which he considered that taxable income or gains could have been omitted from Mr Sangha's returns. The information and documents sought by the Notice were intended to assist Officer Andrews in his enquires into these possible missing sources of income and gains.

29. The Notice refers to a number of companies in which Mr Sangha has, or is alleged to have had, an involvement. There are very few agreed facts about Mr Sangha's involvement with these companies. I have set out below such findings of fact as I have been able to make, based principally on Mr Sangha's witness statement, and in some cases on correspondence from Mr Sangha's agent at the relevant time.

30. I have supplemented these findings of fact with some further information from Officer Andrews' witness statement, where he has explained his understanding of the position based on correspondence with Mr Sangha's agents. Where Officer Andrews' understanding is based on correspondence which has not been provided to the Tribunal, I do not adopt this as my own finding of fact, but set it out to provide context to the information and documents sought in the Notice.

Evolution Drinks

31. Mr Sangha was previously a director of a company based in Hong Kong, known as Evolution Drinks Hong Kong Ltd ("Evolution Drinks"). Evolution Drinks was wound up, or "de-registered", in March 2017.

32. In a letter dated 21 October 2019, Mr Sangha's previous agent informed Officer Andrews that Mr Sangha was previously also the sole shareholder in Evolution Drinks. I had no submissions or evidence to the contrary so find this to be established as a fact.

33. In the Notice, Officer Andrews requested bank statements and accounts for Evolution Drinks to ascertain whether these would affect Mr Sangha's tax position.

Octavian and Yagna

34. Mr Sangha held shares in a US company called Octavian Securities Inc ("Octavian"). He assisted a business associate called Mr Ghuman by attending meetings and building up contacts on behalf of this company. Officer Andrews' understanding was that this company was set up in 2010.

35. In August 2010 Mr Sangha opened an account in his name with Chase Bank (the "Chase account").

36. Mr Sangha was reimbursed for his expenses in connection with his work for Octavian (including for flights and hotels). Officer Andrews understood that the Chase account was

used for this purpose. Mr Sangha's evidence was that besides the reimbursement of his expenses, he received no remuneration for his work for Octavian.

37. Officer Andrews also understood that Mr Sangha had made an investment of £100,000 or £125,000 into a company called Yagna Ltd, and that the source of this money was a loan from Mr Ghuman. It was Officer Andrews' evidence that this information was provided by Mr Sangha's agent in a letter dated 4 November 2020 (I was not provided with a copy of this letter).

38. In his witness statement, Mr Sangha said that Yagna Ltd was liquidated and that the money invested was not returned.

39. In the Notice, Officer Andrews sought bank statements from the Chase account, and information on a £100,000 loan from Mr Ghuman, to establish whether taxable income or gains had been omitted from Mr Sangha's returns.

Other overseas bank accounts

40. HMRC held information based on Common Reporting Standard (CRS) reports suggesting that Mr Sangha held bank accounts in India and China.

41. Mr Sangha's agent wrote to HMRC on 23 July 2018 stating that Mr Sangha had no interest in any overseas bank accounts. Officer Andrews subsequently became aware that Mr Sangha had an account with a US bank (namely the Chase account), suggesting that the statement that he held no interest in overseas bank accounts may be incorrect.

42. It was Officer Andrews' evidence that Mr Sangha's agent said that Mr Sangha "had merely forgotten about the USA account".

43. In the Notice, Officer Andrews sought more information about any overseas bank accounts held by Mr Sangha.

Asiana Ltd

44. Officer Andrews' understanding is that Mr Sangha is, or was, a director and shareholder of a company called Asiana Ltd. I had no submissions or evidence to the contrary so find this to be established as a fact.

45. Officer Andrews sought information in the Notice relating to payments by Mr Sangha to a personal NatWest credit card which Officer Andrews considered was connected to Asiana Ltd.

ITEMS REQUESTED IN THE INFORMATION NOTICE

46. Mr Sangha disputed all the items requested in the Notice. Following variation on review, the information and documents sought by HMRC in the Notice were as follows.

- (1) Bank statements for Evolution Drinks from 28/03/14 to date.
- (2) The last set of accounts of Evolution Drinks.
- (3) The next item is "the paperwork requested". In context, this appears to be a reference to a letter written by Mr Sangha to the former accountants of Evolution Drinks in Hong Kong, requesting copies of the bank statements and accounts referred to in Items (1) and (2) above.

- (4) Bank statements for the Chase account relating to the period when the Chase account was active. HMRC understood that the account was opened in August 2010. Mr Sangha had already provided statements for when the account was dormant; HMRC requested them for the period when the account was active.
- (5) Details of all overseas bank accounts in which Mr Sangha holds an interest, including the country, sort code, account number and named person on the account(s).
- (6) Information on when the accounts opened and closed, plus all the account and bank statements for the relevant years.
- (7) All correspondence and agreements between Mr Sangha and Mr Ghuman regarding a sum of £100,000 paid to Yagna Ltd.
- (8) Information on whether the £100,000 has now been paid back.
- (9) In a letter dated 4 November 2020, Mr Sangha's agent stated that further comments would follow. HMRC requested these further comments.
- (10) Mr Sangha's comments on an article published in February 2012 by Insider Media Ltd concerning Octavian.
- (11) An explanation as to why, according to joint bank accounts for Mr and Mrs Sangha, they received £71,250 from Asiana in the tax year 2015-16, when for that year Mr and Mrs Sangha only declared gross income that nets to £48,959.
- (12) The reply Mr Sangha received from NatWest that states they cannot provide credit card statements going back to August-November 2015.

47. The numbering above does not appear in the Notice. The items requested in the Notice are not numbered point by point; there is some numbering in the Notice but it is out of sequence and confusing, as it appears to relate back to various previous items of correspondence. The bundle also does not appear to contain a version of the Notice that reflects the amendments made by HMRC on review. Given these difficulties, Mr Williams agreed that it would be acceptable for me to use the numbering system above, which derives from the appendix to Mr Sangha's skeleton argument. Where I refer to numbered Items in this decision, the numbering refers to the items as set out in the previous paragraph.

RELEVANT LAW

48. HMRC's powers to issue an information notice are found in FA 2008, Sch 36. In the case of an information notice issued to a taxpayer in relation to their own tax affairs, the starting point is FA 2008, Sch 36, para 1, which at the time of the issue of the Notice provided, so far as relevant:

“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 or for the purpose of collecting a tax debt of the taxpayer.”

49. The following legislative definitions apply:

“58. In this Schedule—

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

[...]

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...

50. HMRC’s powers to issue an information notice are subject to certain restrictions. Those which are relevant to this appeal are as follows:

“18. An information notice only requires a person to produce a document if it is in the person's possession or power.

[...]

20. An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer.

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

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

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

(a) the return, or

(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 so far as relating to the matters to which the taxpayer notice relates.

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

(a) section 9A or 12AC of, or paragraph 5 of Schedule 1A to, TMA 1970, or

(b) paragraph 24 of Schedule 18 to FA 1998.

[...]

59. A reference in a provision of this Schedule to an authorised officer of Revenue and Customs is a reference to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purpose of that provision.”

51. A taxpayer who receives an information notice may appeal against it, but may not appeal against a requirement to produce statutory records. The relevant provisions of FA 2008, Sch 36 are set out below:

“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 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.

[...]

62 (1) For the purposes of this Schedule, information or a document forms part of a person's statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—

(a) the Taxes Acts, or

(b) any other enactment relating to a tax,

subject to the following provisions of this paragraph [...]

(3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired...”

52. The “Taxes Acts” are defined, in FA 2008, Sch 36, para 58, to include TMA 1970.

53. For the meaning of information or documents which a person is required to keep and preserve under the Taxes Acts, TMA 1970, s 12B relevantly provides as follows:

“(1) Any person who may be required by a notice under section 8, 8A, 11 or 12AA of this Act to make and deliver a return for a year of assessment or other period shall—

(a) keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period; and

(b) preserve those records until the end of the relevant day, that is to say, the day mentioned in subsection (2) below or, where a return is required by a notice given on or before that day, whichever of that day and the following is the latest, namely—

(i) where enquiries into the return are made by an officer of the Board, the day on which, by virtue of section 28A(1B) or 28B(1B) of this Act, those enquiries are completed; and

(ii) where no enquiries into the return are so made, the day on which such an officer no longer has power to make such enquiries.

(2) The day referred to in subsection (1) above is—

(a) in the case of a person carrying on a trade, profession or business alone or in partnership or a company, the fifth anniversary of the 31st January next following the year of assessment or (as the case may be) the sixth anniversary of the end of the period;

(b) otherwise, the first anniversary of the 31st January next following the year of assessment

or (in either case) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).”

DISCUSSION

54. Mr Sangha's case was as follows.

(1) None of the demands in the Notice are immune from appeal. Although some of the documents could be said to be a third party's statutory records, none are Mr Sangha's statutory records.

(2) Most of HMRC's demands relate to years other than 2015-16, 2016-17 and 2018-19, and so are void.

(3) HMRC have not discharged their burden to prove that a valid notice of enquiry has been issued for the tax year 2018-19.

(4) In relation to the tax year 2016-17, when HMRC opened their enquiry they stated that the enquiry would be directed to income from property and directorships only and would not extend the scope of the enquiry without letting him know. Many of HMRC's demands do not fall within the scope of that enquiry and Mr Sangha has not been told of any extension to the enquiry's scope.

(5) In relation to documents dated before 13 October 2015, HMRC's only evidence that the Notice was approved by an "authorised officer" for the purposes of FA 2008, Sch 36, para 20 was Officer Andrews' witness statement in which he asserts that approval was given by authorised officer Mr B O'Neil on 6 October 2021. There should be a written record to show that Officer O'Neil was an authorised officer at that time and that he gave the alleged authorisation.

(6) The requested documents are not within Mr Sangha's possession or power and in many cases their description is too broad to be regarded as reasonable.

(7) HMRC has failed to provide suitable material which can be used to decide the appeal. The hearing bundle is fragmented and incomplete and HMRC's statement of reasons is devoid of factual background or relevant allegations. In many cases it is unclear why HMRC have made the demands they have.

Condition A

55. Where a person has submitted a tax return for a period, a taxpayer notice may not be given for the purpose of checking the person's tax position for that period unless one of the conditions in FA 2008, Sch 36, para 21 applies. HMRC rely on Condition A, which applies

where a notice of enquiry has been given in respect of the return and the enquiry has not been completed so far as relating to matters to which the notice relates.

56. It was not disputed that HMRC had opened, and have not closed, enquiries into Mr Sangha's tax returns for the tax years 2015-16 and 2016-17. Condition A is therefore satisfied in so far as the Notice was given for the purpose of checking Mr Sangha's tax position for those years.

57. I have already noted that, as a result of Mr Williams' submission that HMRC had provided no evidence that there was an open enquiry for the tax year 2018-19, I have taken HMRC not to be pursuing this point. The Notice should therefore be varied so that it relates only to checking Mr Sangha's tax position for the years 2015-16 and 2016-17. I have reflected this in the variations I have made to the Notice below.

58. A further submission by Mr Jones, as set out above, related to the tax year 2016-17. When HMRC opened their enquiry into that year, they stated that the enquiry would be directed to income from property and directorships only and that they would not extend the scope of the enquiry without letting Mr Sangha know. HMRC have not informed Mr Sangha that they have extended the scope of the enquiry. Mr Jones submitted that the enquiry should be limited to the sources of income as originally identified by HMRC, and that the Notice should be similarly limited and should not seek information or documents relating to other types of income.

59. Mr Jones based this submission on what he described as the "tailpiece" of FA 2008, Sch 36, para 21(4). As set out above, this subparagraph provides as follows:

"(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 so far as relating to the matters to which the taxpayer notice relates."

60. By "tailpiece" Mr Jones means the wording at the end of this subparagraph, namely "the enquiry has not been completed so far as relating to the matters to which the taxpayer notice relates." Mr Jones suggested I should read these words as meaning that if HMRC have only opened a limited enquiry, they may only issue an information notice for the purpose of checking the aspects of Mr Sangha's tax position that are the subject of the enquiry.

61. I do not accept this submission, because I find that the statutory language does not bear this meaning. I consider that the most natural reading of this provision is that the words "so far as relating to the matters to which the taxpayer notice relates" qualify the word "completed", rather than having the effect that the notice of enquiry must have been given in respect of the matters to which the taxpayer notice relates. In other words, the tailpiece of FA 2008, Sch 36, para 21(4) only comes into play if an enquiry has been completed, whether fully or partially. HMRC have not issued either full or partial closure notices in respect of their enquiry into Mr Sangha's tax return for 2016-17.

62. Under TMA 1970, s 9A, an enquiry extends to anything contained in the return, or anything required to be contained in the return. HMRC can choose to limit an enquiry to certain aspects of a taxpayer's tax position; this is often referred to as an "aspect enquiry", although that is not a term used in the legislation. HMRC's guidance to their officers in the

Enquiry Manual is that if an aspect enquiry is extended to a full enquiry, the taxpayer should be informed; but this is not a statutory requirement.

63. Judge Cannan's comments in *Paul Joseph Bryan t/a Bryan and Co Solicitors* [2020] UKFTT 239 (TC) at [38] apply equally to the present case:

“There is no express provision for any form of limited enquiry into certain aspects of a return. An enquiry extends to the whole of a return, but in practice HMRC can limit the enquiry to specific aspects of a return, which is what happened in the present case. There is provision for an enquiry to be completed into specific aspects of a return, in which case a partial closure notice may be issued. That is not what happened here. HMRC have never issued any form of closure notice in relation to the enquiry.”

64. I therefore find that the information and documents requested by the Notice in relation to Mr Sangha's tax position for the tax year 2016-17 are not required to be limited to items that have a bearing on Mr Sangha's income from property and directorships.

Statutory records

65. There is no right to appeal against an information notice to the extent that the information or documents required by that notice are statutory records.

66. As set out above, under FA 2008, Sch 36, para 62, information or documents form part of a person's statutory records if that person is required under the Taxes Acts to keep and preserve those information or documents, but they cease to be statutory records on the expiry of the period for which they are required to be preserved.

67. When determining the period for which records must be kept, the starting point under TMA 1970, s 12B(2) is that a person carrying on a trade, profession or business must keep their records until the fifth anniversary of the 31 January next following the year of assessment. For the tax years 2015-16 and 2016-17, these periods expired on 31 January 2022 and 31 January 2023 respectively.

68. I respectfully agree with the decision of this Tribunal in *Sarah Duncan v HMRC* [2018] UKFTT 296 (TC) at [28], for the reasons given by Judge Redston in that case, that the time limits in the statutory records provisions continue to run and are not frozen at the date of the issue of the Notice. This means that the records that Mr Sangha needed to deliver correct tax returns for the years 2015-16 and 2016-17 are no longer statutory records under the time limits in TMA 1970, s 12B(2).

69. The time limits in TMA 1970, s 12B(2) are extended in some circumstances, and it is on these extended limits that HMRC rely. They submit that the effect of TMA 1970, s 12B(1) (b) is that records must be preserved until an enquiry into a return is completed. Therefore, according to HMRC, as there are open enquiries into Mr Sangha's tax returns for 2015-16 and 2016-17, he must preserve his records relating to those periods until the relevant enquiries are completed.

70. However, there is an additional component to TMA 1970, s 12B(1)(b). The requirement to preserve records until the completion of any open enquiries is only triggered “where a return is required by a notice given on or before” the day referred to in TMA 1970, s 12B(2). This means that the question of whether the extended period in TMA 1970, s 12B(1)(b) applies depends on whether HMRC issued a notice to file the relevant tax return, and if so, when.

71. HMRC bear the burden of showing that they issued Mr Sangha with notices to file tax returns for the years 2015-16 and 2016-17, and the dates on which they did so. However, I had no evidence or submissions from HMRC on this point. I cannot deduce, from the fact that Mr Sangha filed tax returns for those years, that he must have received notices to file beforehand, because many taxpayers submit tax returns without having received notices to file. I am also unwilling to invoke, of my own volition, TMA 1970, s 12D, which applies where a person delivers a tax return without having first received a notice to file, because I do not know whether (as is required for that section to apply) HMRC have chosen to treat the return as made and delivered in pursuance of such a notice.

72. While this point was not argued before me, I do not consider that HMRC can justly claim to have been ambushed. HMRC have expressly relied on the extended time limit in TMA 1970, s 12B(1)(b), and the legislation clearly states that the availability of the extended limit depends on whether a notice to file was served, and when. HMRC should not be surprised that they need to show that they have met this requirement.

73. I therefore find that HMRC have not demonstrated that any of the documents required by the Notice in relation to Mr Sangha's tax returns for 2015-16 or 2016-17 are, or continue to be, statutory records.

Reasonably required

74. HMRC may only issue an information notice if the information or documents are "reasonably required" by HMRC for the purpose of checking the taxpayer's tax position.

The burden of proof

75. Mr Jones submitted that the law is not entirely clear when it comes to the question of where the burden of proof lies in this regard. Nonetheless, it was his submission that the consensus opinion of this Tribunal appears to be that the burden rests with HMRC.

76. HMRC's submissions on this issue were inconsistent. In their statement of case, and in Mr Williams' opening oral submissions, HMRC accepted that the burden of proof was on HMRC to show that the documents and information requested are reasonably required to check Mr Sangha's tax position. However in their skeleton argument, HMRC cited the following passage from Judge Redston's decision in *Joshy Mathew v HMRC* [2015] UKFTT 139 (TCC) ("*Mathew*"):

"[82] We find that the weight of authority is that the burden of proof in relation to the "reasonably required" test in Sch 36 Notices rests on the appellant, and not on HMRC.

[83] We note that this is consistent with the position in substantive tax appeals. In *Nicholson v Morris* [1977] STC 162, Goff LJ approved the words of Walton J, when he said that the reason for this was that:

'it is the taxpayer who knows and the taxpayer who is in a position (or, if not in a position, who certainly should be in a position), to provide the right answer, and chapter and verse for the right answer.'"

77. I asked Mr Williams to clarify HMRC's submissions in this regard. He said that as the skeleton argument had a more recent date, he would like to rely on the submissions in the skeleton and not on the statement of case. However, despite this clarification, I did not find HMRC's submissions, taken as a whole, to be consistent with them adopting the position that the burden of proof is on Mr Sangha. This is because throughout their submissions, oral and

written, HMRC repeatedly state that the information or documents required are reasonably required, not that Mr Sangha has failed to show that they are not reasonably required.

78. In addition, HMRC's skeleton argument did no more than quote the passage from *Mathew*, without explaining how they considered the finding in that passage applies to the present case. I note that it would not be correct to cite *Mathew* as authority for this Tribunal having previously decided that the burden lies on the taxpayer in these circumstances, because Judge Redston found that it was not necessary to decide the question in that case, and went on, at [85], to state that "it remains arguable that the burden is on HMRC".

79. I have decided that I should approach this appeal on the basis that the burden is on HMRC to establish that the information and documents were reasonably required for the purpose of checking Mr Sangha's tax position. As I have found that HMRC's submissions on this issue were not clear, I consider it is appropriate for me to set out below the reasons why I have adopted this approach.

80. The conclusions set out in *Mathew* at [82] and [83], cited above, followed the judge's analysis of *R (oao) Derrin Brother Properties Ltd v HMRC* [2014] EWHC 1152 (Admin) ("*Derrin*") and *R v Commissioners of Inland Revenue ex parte T C Coombs & Company* [1991] 2 AC 283 ("*Coombs*"). Both *Derrin* and *Coombs* involved judicial review proceedings relating to third party notices. Third party notices, which require a third party to provide information or documents for the purpose of checking a person's tax position, are issued under FA 2008, Sch 36, para 2. These differ from taxpayer notices, which require a taxpayer to provide information or documents for the purpose of checking their own tax position, and are issued under FA 2008, Sch 36, para 1. Unlike taxpayer notices, third party notices can only be issued with either the agreement of the taxpayer, or the approval of the Tribunal.

81. In *Cliftonville Consultancy Ltd v HMRC* [2018] UKFTT 231 (TC) ("*Cliftonville*"), Judge Nicholl set out, at [25] to [39], her reasons for considering the appeal on the basis that the burden was on HMRC to establish that the information and documents were reasonably required for the purpose of checking the appellant company's tax position. In her analysis, Judge Nicholl considered the different procedures for issuing taxpayer notices and third party notices, and stated at [39]:

"If the approval of the tribunal is sought and obtained for the issue of a third party notice, the appellant will bear the burden on an application for judicial review because the tribunal has confirmed that the officer has already satisfied the conditions for the approval of the third party notice, creating the strong presumption of regularity. If the approval of the tribunal is not sought it still remains a condition that the information or document is reasonably required by the officer and this is to be established by HMRC when a taxpayer appeals to the tribunal."

82. In *Hargreaves and others v HMRC* [2021] UKFTT 80 (TC) ("*Hargreaves*"), Judge Vos tended to the view that the correct analysis was that HMRC have the burden of initially providing reasons why the information is reasonably required to check the taxpayer's tax position and that, once they have done this, the burden shifts to the taxpayer to show why the information is not reasonably required. At [64], the judge concluded:

"The position in relation to appeals against taxpayer notices is very different to an appeal against a third party notice. In the case of a third party notice, HMRC will already have had to persuade a tribunal that the information is reasonably required. It is not therefore surprising that, on an appeal against a third party notice (which can only take place by way of judicial review) the burden is on the appellant to show why the information is not reasonably required. In the case of a taxpayer notice, it must be right that, in the same

way, HMRC initially has the burden of explaining the reasons why they believe that the information is reasonably required and that, only then, does the taxpayer have the burden of proving that it is not.”

83. In *Perring v HMRC* [2021] UKFTT 110 (TC) at [16], Judge Gething found that the burden of proof lies with HMRC. In this case, too, the judge compared third party notices to taxpayer notices. In the case of a third party notice, the judge found that it was clear that HMRC has the burden of satisfying the Tribunal that the officer giving the notice is justified in doing so. The judge went on to find that in the case of a taxpayer notice, there is no indication that Parliament had relieved HMRC of the burden of satisfying the Tribunal that the information notice satisfies the statutory criteria and that the officer was justified in issuing the notice.

84. In *Hackmey v HMRC* [2022] UKFTT 160 (TC) at [34], Judge Aleksander cited the decisions in *Cliftonville* and *Hargreaves*, and found that it was probably the better view of the legislation that the burden of proof rests on HMRC to show that the requirements for issuing an information notice (including showing that the information or documents sought are reasonably required) are met.

85. In *Jenner v HMRC* [2022] UKFTT 203 (TC) (“*Jenner*”), HMRC submitted that the burden of proof fell on them to show that the information sought in the disputed notices was reasonably required. Judge Sukul agreed with Judge Nicholl’s remarks in *Cliftonville* (quoted above) and on that basis, accepted HMRC’s submission.

86. Having reviewed the cases cited above, I agree with Mr Jones’s submission that consensus opinion of this Tribunal appears to be that the burden of proof rests with HMRC. I gratefully adopt the conclusions of the Tribunal in *Cliftonville* on this issue and, for the reasons given by Judge Nicholl, find that I should approach this case on the basis that the burden is on HMRC to establish that the information and documents sought by the Notice are reasonably required for the purpose of checking Mr Sangha’s tax position.

The meaning of “reasonably required”

87. There is no statutory definition of “reasonably required”. HMRC cited a number of previous decisions of this Tribunal to assist me in assessing whether the information and documents sought by the Notice were reasonably required for the purpose of checking Mr Sangha’s tax position.

88. In *Spring Capital v HMRC* [2015] UKFTT 8 (TC) at [34], Judge Mosedale said:

“There is nothing in [FA 2008, Sch 36, para 1] that requires HMRC to suspect that the return is incorrect before issuing an information notice. HMRC are entitled to check taxpayer’s tax position and they are entitled to any documents or information reasonably required for the purpose of doing so. In other words, HMRC are entitled to undertake ‘fishing expeditions’ when checking returns: they do not need suspicion in order to check a tax return.”

89. In *Steven Price v HMRC* [2011] UKFTT 624 (TC) (“*Price*”), in the context of an application by the taxpayer for a direction that HMRC issue a closure notice in relation to the enquiry they had opened into his personal tax return, Judge Mosedale commented, at [10], that:

“...HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody's time if HMRC are forced to

make assessments without knowledge of the full facts. The statutory scheme is that HMRC are entitled to full disclosure of the relevant facts: this is why they have a right to issue (and seek the issue of) information notices seeking documents and information reasonably required for the purpose of checking a tax return (see Schedule 36 of Finance Act 2008).”

90. HMRC submitted, and I accept, that although the Tribunal in *Price* was considering whether to direct the issuing of a closure notice, this extract provides helpful guidance in the context of information notices.

91. HMRC also cited *Mathew* and *Jenner* as examples of cases in which the Tribunal has accepted that it was reasonable for HMRC to check whether the taxpayer has other sources of income.

92. In *Bemal Patel v HMRC* [2017] UKFTT 323 (TC) (“*Bemal Patel*”), Judge Citron said at [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.”

93. While none of these cases are binding on me, I confirm that, when considering whether the information and documents in the Notice were reasonably required to check Mr Sangha’s tax position, I have kept in mind the guidance provided by the Tribunal in these previous decisions.

Possession or power

94. An information notice only requires a person to produce a document if it is in that person's possession or power.

95. In *HMRC v Mattu* [2021] UKUT 245 (TCC) (“*Mattu*”), the Upper Tribunal approved the approach taken in *Parissis v HMRC* [2011] UKFTT 218 (TC) at [19], where Judge Mosedale said that:

“It seems to us that it is HMRC's application for a penalty and it is for them to satisfy us that the documents are in the respondents' possession or power. We bear in mind it is hard to prove a negative. But, we think, although HMRC must raise a prima facie case that the documents are in the respondents' possession or power then it is for the respondents to show that they are not.”

96. The Upper Tribunal confirmed at [101] that the term “power” means both legal power and de facto power to obtain documents (or information).

97. In *Mattu*, the Upper Tribunal also approved the approach adopted in *H A Patel & K Patel (a partnership) v HMRC* [2014] UKFTT 167 (TC) (“*H A Patel*”). In that case, the taxpayers claimed that the documents requested in an information notice were not in their possession or power, but were within the possession of a professional offshore trustee. Judge Sinfield held at [14]-[16] that the taxpayers must have had power to influence the behaviour of the trustee and that a single request and refusal (with no attempt to follow up the request) did not constitute a serious attempt to obtain the relevant information from the trustee, and therefore it could not be concluded that the information and documents were not in the taxpayers’ possession or power.

Old documents

98. I have already found that the Notice was given with the approval of an authorised officer within the meaning of FA 2008, Sch 36, para 20. This means that any requests in the Notice for documents originating more than six years before the date of the Notice are not invalidated on account of the age of those documents.

Specificity

99. Mr Jones submitted that to be valid, the Notice must exhibit a sufficient degree of specificity. I respectfully agree with the Tribunal in *RD Utilities Ltd v HMRC* [2014] UKFTT 303 (TC) at [10] where it was said that:

“The Tribunal takes the view that Information Notices should be expressed in clear terms and that it should be a straightforward matter for both parties to know whether an Information Notice has been complied with. That is why HMRC guidance states that the Information Notice should request facts and not opinion.”

100. A requirement for an information notice to be worded in sufficiently clear terms so that both parties will know whether it has been complied with is, moreover, consistent with the statutory provisions that impose penalties where a person fails to comply with an information notice. If the wording in the notice is unclear, HMRC will not be able to establish that the notice has not been complied with, and so will not be able to impose penalties for non-compliance. This is an additional reason why information notices should be expressed in clear terms.

DECISION ON CONTESTED ITEMS

Bank statements and accounts for Evolution Drinks

101. HMRC’s case was that the bank statements and accounts of Evolution Drinks are statutory records but, as I have found above, HMRC have failed to establish that any of the information or documents sought in the Notice are statutory records.

102. HMRC submitted in the alternative that the bank statements and accounts of Evolution Drinks are reasonably required to check Mr Sangha’s tax position. Mr Jones’s case was that these documents are not in Mr Sangha’s possession or power.

103. Applying the guidance provided by the Upper Tribunal in *Mattu*, I find that HMRC have not established a prima facie case that bank statements and accounts of Evolution Drinks are in Mr Sangha’s possession or power. Although Mr Sangha was a director and shareholder of Evolution Drinks, this company has not been operational since 2017. I had no evidence that there is an identified person who currently holds these documents, whether they

would be willing to provide them to Mr Sangha or not. The company was registered in Hong Kong, not the UK, and I had no evidence as to what rules operate in Hong Kong as to the public filing of accounts, or for how long these records might be available.

104. In this respect the present case differs from *H A Patel*, as in *H A Patel* the relevant information and documents were accepted to be in the possession of an identified person with whom the taxpayers were in correspondence, namely the offshore trustee. In that case, moreover, the relevant trust was one of which the taxpayers were the settlors, and the taxpayers had the power to appoint and remove the trustee. In this context, Judge Sinfield did not accept that the trustee would not respond to or take account of the wishes of the taxpayer. In the present case, HMRC have not identified any person who would be expected to respond to, or take account of the wishes of, Mr Sangha.

105. As director and shareholder of Evolution Drinks, it is reasonable to assume that Mr Sangha would previously have seen, or had the means to obtain, the company's accounts and bank statements. However, this does not mean that he still either possesses them or has the means to obtain them. If these were previously his statutory records (on which I express no view), I have already found that HMRC have failed to establish that he is still required to preserve them under TMA 1970, s 12B.

106. Further, it was Mr Sangha's uncontested evidence that he had requested the bank statements and accounts for this company both from a previous director, and from the accountants in Hong Kong who prepared and filed the accounts, but in neither case had received a response. While I did not allow Mr Williams to cross-examine Mr Sangha, I asked him to tell me all the questions he wished to put in cross-examination, and these did not include questions about the efforts Mr Sangha had gone to in order to obtain these documents. Mr Williams' intended questions about Evolution Drinks were instead about whether Mr Sangha had been a director of this company and for how long: these questions could have been included in the Notice as requests for information but, as I have found, were not appropriate as a topic for cross-examination.

107. I therefore set aside Items (1) and (2) from the Notice.

108. I have found above that Item (3) is a request for a copy of a letter written by Mr Sangha to the former accountants of Evolution Drinks in Hong Kong. In their skeleton argument at paragraph 63, HMRC state that they are no longer seeking copies of letters to the accountants in Hong Kong. As HMRC are no longer seeking this letter, Item (3) is also set aside.

Statements for Chase bank account

109. I agree with HMRC that statements from a bank account in Mr Sangha's own name contain "basic financial information" in the sense used by Judge Citron in *Bemal Patel*. The statements would show details of Mr Sangha's income and expenditure, and these are relevant to his income tax position. I therefore find that it is reasonable for the Notice to require Mr Sangha to provide bank statements from the Chase account dating from the tax years under enquiry, namely 2015-16 and 2016-17.

110. In his specific submissions about each item requested in the Notice, Mr Jones did not suggest that the statements from this account were not in Mr Sangha's possession or power; instead these submissions were directed to the fact that the Notice did not limit this request to a particular period of time. Mr Jones did, however, make a general submission that the requested documents (which I infer means all the documents requested in the Notice) were not within Mr Sangha's possession or power. HMRC submitted that these documents should be in Mr Sangha's possession, or if not then it is in his power to obtain them.

111. As banks customarily provide their account holders with statements, I find that there is a prima facie case that statements of a bank account in a person's own name are within that person's possession or power. Applying the guidance from the Upper Tribunal in *Mattu*, it is then for Mr Sangha to show that they are not. I had no evidence or submissions as to whether he still holds statements from the Chase account dating from the years under enquiry, or as to whether he has made any attempt (serious or otherwise) to obtain them. Mr Sangha has therefore not shown that these documents are not in his possession or power.

112. The wording of this item in the Notice is opaque as regards time periods, because it requests statements from "when the account was active". According to the Notice, Mr Sangha has already provided statements from "when the account was dormant". Mr Williams was not able to tell me at what times the account was active or dormant, but Officer Andrews' witness statement states that the statements already provided relate to "part of 13-14 and 15-16 tax years". I asked Mr Williams how far back HMRC were seeking to go in their requests for statements from the Chase account, and he said they were requesting statements dating back to the time the account was opened, in August 2010. He submitted that these documents were reasonably required to check whether Mr Sangha had received payment for his work in the US in relation to Octavian.

113. Officer Andrews refers, in his witness statement, to an online media article about Octavian, published in February 2012, which referred to Mr Sangha as a partner in the business. Officer Andrews also refers to being told by Mr Sangha's agent that Mr Sangha was the chairman of Octavian between 2010 and 2012.

114. The problem with these submissions is that they do not explain why these documents are reasonably required to check Mr Sangha's tax position for the years under enquiry, namely 2015-16 and 2016-17. It appears, from Officer Andrews' witness statement, that he suspects Mr Sangha may have undeclared income from earlier years, dating back to 2010. However, HMRC do not seek to rely on Condition B in FA 2008, Sch 36, para 21(6) (which applies where HMRC have reason to suspect that an amount has been omitted from a return), but have relied instead on Condition A.

115. HMRC submitted that the key test is whether information or documents are reasonably required for the purpose of checking a person's tax position, not whether as a matter of fact it turns out to affect their tax position. According to HMRC, sometimes it is not possible to know for sure that the information or documentation requested will affect a person's tax position until the information is obtained.

116. While I accept this submission in principle, it does not override the burden on HMRC to demonstrate that the information or documents sought are reasonably required. Even if Officer Andrews suspected, correctly, that Mr Sangha received undeclared income from Octavian between 2010 and 2012, I had no submissions to explain how this might affect Mr Sangha's tax position in the years 2015-16 and 2016-17. I would also observe that the older the bank statements sought, the less clear it is that HMRC have a prima facie case that these documents are in Mr Sangha's possession or power.

117. Item (4) is therefore varied to read as follows.

- *Provide bank statements for the Chase account for the period 6 April 2016 to 5 April 2017.*
- *Provide bank statements which you have not already sent to HMRC for the Chase account for the period 6 April 2015 to 5 April 2016.*

118. For this item only, the date on which Mr Sangha must comply with this requirement is 30 days after HMRC write to Mr Sangha confirming the period within 6 April 2015 and 5 April 2016 for which they have already received these statements.

Details of other overseas accounts

119. HMRC are seeking information on any overseas bank accounts which Mr Sangha holds or in which he has an interest. As with the statements of the Chase account, this is basic financial information which is relevant to establishing Mr Sangha's income tax position. Mr Williams confirmed that HMRC was only seeking this information in relation to the years under enquiry. I find that this information is reasonably required to check Mr Sangha's tax position for the years 2015-16 and 2016-17.

120. Mr Sangha, in his witness statement, states "I do not have any foreign bank accounts or interests which would alter my tax position." These words appear to be carefully chosen: it is not an unequivocal statement that he does not have any accounts which HMRC do not know about, but suggests that if he has any such accounts, he has been advised that they do not affect his tax position. HMRC are entitled to information on payments made and received through any such accounts, to reach their own view on whether these affect Mr Sangha's tax position.

121. Mr Jones submitted that HMRC had already had an answer to this request, because the Notice itself states that "You have stated you do not have any other foreign bank accounts or interests". This appears to be a reference to a letter which Officer Andrews received from Mr Sangha's agent in 2018. Mr Jones submitted that as Mr Sangha had already told HMRC that he did not have any other overseas accounts, by this request HMRC are in reality saying that they do not believe Mr Sangha. According to Mr Jones, it is not appropriate for HMRC to use an information notice to challenge Mr Sangha's veracity, and HMRC should not tacitly invite the Tribunal to accept that he is untruthful.

122. I accept that Mr Sangha's agent told HMRC in 2018 that Mr Sangha had no interest in any overseas bank accounts. However, Mr Jones did not challenge Officer Andrews' evidence that he was later told that Mr Sangha had "merely forgotten about the USA account", suggesting that the previous statement that there were no overseas accounts was incorrect. Mr Sangha had the opportunity to state plainly in his witness statement that he does not have an interest in any overseas bank accounts, but did not do so. In addition, HMRC have received information under the CRS indicating that Mr Sangha has bank accounts in India and China.

123. In these circumstances I consider that it is more than reasonable for HMRC to require Mr Sangha to disclose plainly what overseas bank accounts he held in the periods under enquiry.

124. I consider I should vary the relevant items in the Notice in two respects. The first is to make clear that the information and documents sought are limited to the years under enquiry. The second relates to the fact that the Notice requires disclosures of accounts in which Mr Sangha holds "an interest". "An interest" is a wide term and could encompass remote interests which would not give Mr Sangha access to the information or documents which HMRC are seeking. I have therefore varied the wording to make clear that the accounts in question are any which Mr Sangha has the power to operate.

125. Items (5) and (6) in the Notice are varied to read as follows.

- *Provide details of all bank accounts outside the UK held by you solely, jointly or that you had the power to operate in the period 6 April 2015 to 5*

April 2017, to include the country, sort code (if any), account number and named person(s) on the account.

- *State whether any of these accounts opened or closed in the period 6 April 2015 to 5 April 2017, and the dates on which this happened.*
- *Provide bank statements for each such account for the period 6 April 2015 to 5 April 2017.*

Investment in Yagna

126. HMRC have requested correspondence and agreements between Mr Sangha and Mr Ghuman regarding the £100,000 or £125,000 that was allegedly paid by Mr Ghuman to Mr Sangha and then invested in Yagna Ltd. The Notice states: “we consider that in the balance of probabilities this was remuneration for your work in Octavian.”

127. It is reasonable for HMRC to seek to establish whether Mr Sangha received £100,000 or £125,000 of undeclared income in the years under enquiry. The problem is that, if Officer Andrews’ understanding is correct, it appears unlikely that this amount was received after 5 April 2015: HMRC believes that this money was invested in Yagna Ltd, and in a letter dated 9 July 2019, Officer Andrews states that he understood that Mr Sangha disposed of shares in Yagna Ltd on 23 August 2015.

128. However, I have very little information about the underlying facts, and HMRC are entitled to know whether Mr Sangha received this payment in the years under enquiry. I therefore vary Items (7) and (8) so that they read as follows.

- *State whether Mr Ghuman made a payment to you of either £100,000 or £125,000 in the period 6 April 2015 to 5 April 2017. If so:*
 - (i) *State the nature of that payment.*
 - (ii) *State whether you have repaid all or any of this amount to Mr Ghuman, and when.*
 - (iii) *Provide contracts between yourself and Mr Ghuman or other documentation to enable HMRC to understand why this payment was made.*

Disposal of shares in Asiana Ltd

129. Item (9) in the Notice states: “In your letter dated 4 November, you state further comments to follow. As I have not received any further information please let me know what comments you were going to make.”

130. I agree with Mr Jones that this request cannot stand as it is drafted, because it is not sufficiently clear what it is asking for. However, I consider it is appropriate for me to evaluate the request in the context of the evidence with which I have been provided.

131. Officer Andrews, in his witness statement, says that this request relates to shares in Asiana Ltd which Mr Sangha disposed of to family members on 31 October 2014. In a letter dated 21 October 2019 (of which I had a copy), Mr Sangha’s agent said that the shares were considered to have no value. Officer Andrews replied on 25 November 2019, asking why Mr Sangha believed the shares were worthless. It was Officer Andrews’ view that the shares were not, in fact, worthless and that Mr Sangha should have reported a capital gain.

132. It appears that in the “letter dated 4 November” (of which I did not have a copy), Mr Sangha’s agent had promised “comments” to explain why these shares were considered to have no value. I therefore find that Item (9) amounts to a request for an explanation as to why

Mr Sangha believed that the shares in Asiana Ltd, which he disposed of on 31 October 2014, were worthless.

133. However, 31 October 2014 does not fall within the tax years under enquiry. HMRC did not make any submissions that would explain why an alleged capital gain in a previous year would affect Mr Sangha's tax position for the years 2015-16 or 2016-17. I therefore find that HMRC have not discharged the burden of showing that this information is reasonably required to check Mr Sangha's tax position for the years under enquiry.

134. Item (9) is therefore set aside.

Mr Sangha's role in Octavian

135. In relation to Item (10), the Notice states that, in the online media article about Octavian published in February 2012 (to which I have already referred above), Mr Sangha is described as Mr Ghuman's "business partner not company secretary/advisor as you have stated." The Notice continues: "please let me have your comments regarding the above."

136. Mr Jones submitted that a request for "comments" is too vague, and that in the context of FA 2008, Sch 36, "information" means factual information, or primary facts.

137. I agreed that Item (10) is too vague as it stands, but I am empowered to vary it. Taking the wording of the request in its context, it is clear that Mr Sangha is being asked to explain why (if this is the case) he has previously described himself as a company secretary or adviser in Octavian, when HMRC have another source of information describing him as a partner in the business. It is reasonable for HMRC to ask about Mr Sangha's role in Octavian, as this may provide information on the likely character of any payments he received in relation to that company. This information must, however, relate to the years under enquiry.

138. I therefore vary Item (10) so that it reads as follows.

- *State whether, in the period from 6 April 2015 to 5 April 2017, you held any role in Octavian Securities Inc, and if so, explain the nature of that role.*

Income received from Asiana Ltd

139. In relation to Item (11), the full extract from the Notice is as follows.

"As you know we have the joint bank account statements for Mr & Mrs Sangha. For the 15/16 tax year we counted all the payments from Asiana that were received in the account, this totalled £71250. We then looked at self-assessment returns for you & Mrs Sangha. After tax and NI, the combined net income was £48959.

Please explain why you & Mrs Sangha received £71250 when you and Mrs Sangha have only declared gross income that only nets to £48959?"

140. Mr Williams submitted that this information is required to explain a discrepancy between the payments from Asiana Ltd and the amounts of income declared in the tax returns.

141. As drafted, this request is problematic because it requests information which relates to Mrs Sangha's tax position, and the Notice is addressed to Mr Sangha, not to his wife. A taxpayer notice may not be used to require Mr Sangha to disclose information relating to the tax position of another person, namely Mrs Sangha.

142. Payments received into a joint bank account could be taxable in the hands of either account holder. I consider that it is reasonable for HMRC to require information as to how

much of the £71,250 was income of Mr Sangha, as opposed to Mrs Sangha. It is also reasonable for them to require information on the nature of the income, so that they can ascertain how it should be treated for tax purposes. Once they have this information they should be able to form their own view as to whether there is a discrepancy between these amounts and the income declared on Mr Sangha's tax return, without asking for an explanation from Mr Sangha. Of course, if Mr Sangha wishes to provide an explanation for any apparent discrepancy, he is at liberty to do so.

143. Item (11) is varied so that it reads as follows.

- *Between 6 April 2015 and 5 April 2016, Asiana Ltd paid a total of £71,250 into the joint account you hold with Mrs Sangha. Of this £71,250, state what proportion belonged to you (in the sense that it was you who directed Asiana Ltd to pay these amounts into the joint account), as opposed to belonging to Mrs Sangha.*
- *Of the proportion of the £71,250 belonging to you, state the nature of these payments, for example whether they were earnings, loan repayments, expenses or something else.*

NatWest credit card

144. In relation to Item (12), the full extract from the Notice is as follows.

“You have advised that you do not have a personal NatWest credit card and have not used one. We have seen payments from your bank account to NatWest CC. It is noted that in Asiana each member of the LLP has access to a Nat West CC.

Please let me have sight of the reply you received from NatWest that states they cannot go back to August-November 2015.”

145. HMRC submitted that this relates to a request for information in relation to a personal NatWest credit card.

146. Officer Andrews' witness statement suggests a somewhat more complicated situation. Under a subheading of “NatWest CC” he says he asked for statements (in context it is not clear whether this means statements for Mr Sangha's bank account or for the NatWest credit card to which payments were being made). Then, under a subheading of “NatWest acct ending 455” he says that statements were provided but some were missing, and that Mr Sangha was informed by NatWest that they cannot go back that far. From other documentation in the bundle I find that the NatWest account with a number ending in 455 is a current account held jointly by Mr and Mrs Sangha.

147. In my view, HMRC have failed to articulate with sufficient clarity what information they are seeking, and this is therefore not a valid request for information relating to the NatWest credit card. In the extract from the Notice reproduced above, the only request for information or documents is for a letter in which NatWest allegedly state that they cannot provide statements for a certain period. According to Officer Andrews' witness statement, he believes such a letter exists because it was referred to in another letter, from Mr Sangha's agent, dated 4 November 2020. Mr Williams confirmed that the letter of 4 November 2020 was not included in the hearing bundle, and so I have not seen it. From Officer Andrews' witness statement it appears that the letter from NatWest related to Mr and Mrs Sangha's current account, not a credit card.

148. It is clear Officer Andrews would like to receive information about the credit card to which Mr Sangha was making payments, but, aside from the letter from NatWest, the Notice

does not state what that information is. Mr Williams was unable to tell me why Officer Andrews considered that payments to a credit card were relevant to Mr Sangha's tax position: if, for instance, the officer suspected that Mr Sangha had the use of a company credit card and was using this for personal expenditure, it is not clear why he was making payments to that card from his personal account.

149. In short, the only cogent request for information or documents in Item (12) is for a letter from NatWest, and on the limited evidence and submissions available to me, I find that HMRC have not demonstrated that this was reasonably required to check Mr Sangha's tax position for the years under enquiry.

150. Item (12) is therefore set aside.

CONCLUSION

151. Items (1), (2), (3), (9) and (12) are set aside. The other Items are varied as set out above. For ease of reference, a complete version of the varied Notice is set out in the Appendix to this decision.

152. Other than in relation to Item 4, I direct that Mr Sangha must comply with these requirements within 30 days of the date of the release of this decision.

153. For Item 4, as set out above, I direct that Mr Sangha must comply with this requirement 30 days after HMRC write to Mr Sangha confirming the period within 6 April 2015 and 5 April 2016 for which they have already received the bank statements in question.

154. This notice contains full findings of fact and reasons for the decision.

155. In accordance with FA 2008, Sch 36, para 32(5), a decision of this Tribunal on an appeal against an information notice is final.

**RACHEL GAUKE
TRIBUNAL JUDGE**

Release date: 27th JUNE 2024

APPENDIX

The Notice as varied

Item	
(4)	<p>Provide bank statements for the Chase account for the period 6 April 2016 to 5 April 2017.</p> <p>Provide bank statements which you have not already sent to HMRC for the Chase account for the period 6 April 2015 to 5 April 2016.</p>
(5) and (6)	<p>Provide details of all bank accounts outside the UK held by you solely, jointly or that you had the power to operate in the period 6 April 2015 to 5 April 2017, to include the country, sort code (if any), account number and named person(s) on the account.</p> <p>State whether any of these accounts opened or closed in the period 6 April 2015 to 5 April 2017, and the dates on which this happened.</p> <p>Provide bank statements for each such account for the period 6 April 2015 to 5 April 2017.</p>
(7) and (8)	<p>State whether Mr Ghuman made a payment to you of either £100,000 or £125,000 in the period 6 April 2015 to 5 April 2017. If so:</p> <ol style="list-style-type: none"><li data-bbox="448 1032 1401 1077">i. State the nature of that payment.<li data-bbox="448 1077 1401 1167">ii. State whether you have repaid all or any of this amount to Mr Ghuman, and when.<li data-bbox="448 1167 1401 1279">iii. Provide contracts between yourself and Mr Ghuman or other documentation to enable HMRC to understand why this payment was made.
(10)	<p>State whether, in the period from 6 April 2015 to 5 April 2017, you held any role in Octavian Securities Inc, and if so, explain the nature of that role.</p>
(11)	<p>Between 6 April 2015 and 5 April 2016, Asiana Ltd paid a total of £71,250 into the joint account you hold with Mrs Sangha. Of this £71,250, state what proportion belonged to you (in the sense that it was you who directed Asiana Ltd to pay these amounts into the joint account), as opposed to belonging to Mrs Sangha.</p> <p>Of the proportion of the £71,250 belonging to you, state the nature of these payments, for example whether they were earnings, loan repayments, expenses or something else.</p>