

Information notices – Tribunal cases (Lecture P1470 – 17.13 minutes)

This article considers two recent tax tribunal cases relating to information notices issued by HMRC under the provisions of Schedule 36, Finance Act 2008. Unless stated otherwise, all statutory references are to Schedule 36, Finance Act 2008. It is important to stress that each case will be determined on its facts.

Furlong Services Ltd v HMRC [2024] TC09252

HMRC had opened an enquiry into the 2016/17 tax return of Mr Curtis, the sole director of Furlong Services Limited ("Furlong"). HMRC's Fraud Investigation Service took over the investigation into the director's affairs, and subsequently started an investigation into Furlong.

HMRC had become aware that the director had disposed of shares in another company, Select Management Limited ("Select"). HMRC requested details of the consultancy income that Mr Curtis had received following the disposal of shares in Select. Mr Curtis's advisers told HMRC that the subsequent consultancy services had been completed by Furlong, as the consultancy agreement had been novated to that company. The consultancy work was connected with football, but Furlong's tax computations, for the periods ending 31 March 2017, 31 March 2018 and 31 September 2019, did not make any reference to football or consultancy, only to farming activities.

HMRC issued an information notice to Furlong, under Paragraph 1, on 1 December 2022. The company appealed against the information notice. In response to the appeal, some of the items were removed from the notice.

The company requested a review of the revised information notice by an independent HMRC officer. An amended information notice was issued, following the removal of certain items from the original notice. The company submitted an appeal against the amended notice. There were various case management issues noted in the decision, but they are not considered here.

The company disputed all the items contained in the (amended) information notice. The items were challenged for a variety of reasons, including whether certain items were "statutory records", whether the HMRC officer has reason to suspect that tax had been underassessed, whether HMRC could request old documents, and whether information or documents were "reasonably required" to check the company's tax position.

The items included in the amended information notice, following the HMRC review, as noted in the tribunal decision, were as follows (the numbering from the original information notice was used, and noted in the decision):

Item 1 - A breakdown of the income declared by Furlong in its accounts for each of the period periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021 splitting the income based on its sources (e.g. income from farming, income from football etc).

Item 2 - Additional details of income relating to the football industry that Furlong has received over the last six years. This should include a breakdown of the football income, including who the work was completed for and the amount of income.

Item 4 - For the period ended 30 September 2019, details of the travelling expenses totalling £66,854. This should include the date expenditure was incurred and its value as well as an explanation of the business purpose.

Item 5 - Copies of all consultancy agreements drawn up between Furlong and other parties for work to be completed relating to the football industry.

Item 7 - Invoices for the travelling expenditure incurred during the period ending 30 September 2019.

Following consideration of the evidence, the tribunal confirmed, set aside, or altered, the requirements, as noted below:

Items 1, 2 and 5 were considered together. Item 1 was confirmed, and Items 2 and 5 were varied. The tribunal made further variations, where it was considered that the language used could be clearer. The judge considered that items 1 and 2 related to statutory records, rejecting counsel for the company's argument that a "breakdown" of income is not a statutory record because it is asking for new documents to be brought into existence. The judge considered this to be a request for "information", noting that the definition of a statutory record in Paragraph 62 applies both to information and to documents. However, the judge considered that Items 1 and 2 were statutory records, but only in so far as they relate to the periods ending on 30 September 2019, 30 September 2020 and 31 July 2021. The documents requested at item 5 were not considered to be statutory records. The tribunal found that HMRC had discharged the burden of showing that there was a relevant "reason to suspect", but not for the periods ending on 30 September 2020 or 31 July 2021. Although the taxpayer had sought to argue that HMRC were on a "fishing expedition", the tribunal determined that Items 1, 2 and 5, subject to the variations noted, were reasonably required for the purpose of checking Furlong's tax position.

Items 4 and 7

The tribunal noted that a company's statutory records include records of all expenses incurred in the course of the company's activities, and the matters in respect of which the expenses arise. It followed that records of the dates on which travelling expenses were incurred, and in what amounts, also form part of Furlong's statutory records. As such, there was no right of appeal in relation to that aspect of the information notice. Invoices relating to the travelling expenses were also considered to fall within the definition of a statutory record.

The judge noted that it was not clear to her whether an "explanation of business purpose" in relation to the travelling records was a statutory record, and there had not been any detailed submissions on this matter. The judge therefore went on to consider whether the explanation was "reasonably required" to check the company's tax position for the period ending 30 September 2019. The judge determined that it was so required.

The company was directed to comply with the varied information notice within 30 days of the date of the release of the decision.

The case decision is available in full at:

<https://www.casemine.com/judgement/uk/66abd4c0c1cce041313c8624>

Sangha v HMRC [2024] UKFTT 564 (TC)

In this case, HMRC issued several information notices to Mr Sangha, under Paragraph 1. HMRC had opened enquiries into Mr Sangha's tax returns for 2015/16 and 2016/17, and the information notice, which was the subject of the hearing, issued on 13 October 2021, related to those enquiries, particularly his income from property and directorships.

Mr Sangha requested a review of the information notice by an independent HMRC officer. An amended information notice was issued, following the removal of certain items from the original notice. Mr Sangha submitted an appeal against the amended notice. There were various case management issues relevant to the case, but they are not considered in this session.

Mr Sangha disputed all the items contained in the information notice. The items were challenged for a variety of reasons, including the status of statutory records, whether information or documents were “reasonably required” to check Mr Sangha’s tax position, and whether certain items were in his possession or power.

The tribunal considered each of the 12 items contained in the information notice. Some of the items were set aside, for various reasons, while the rest were varied. Although the case was decided on the facts, there are some useful insights as to what the tribunal considered appropriate for HMRC to require the taxpayer to produce.

The items included in the amended information notice, following the HMRC review, as noted in the tribunal decision, were as follows:

1. Bank statements for Evolution Drinks from 28/03/14 to date (Mr Sangha was previously a director of a company based in Hong Kong, known as Evolution Drinks Hong Kong Ltd, which was wound up in March 2017).
2. The last set of accounts of Evolution Drinks.
3. “The paperwork requested”. The tribunal noted that this appeared 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 Limited (An amount of £100,000 or £125,000 had allegedly been paid by Mr Ghuman to Mr Sangha, and then invested in Yagna Ltd. Mr Sangha had disposed of shares in Yagna Ltd in August 2015. HMRC considered that the amount was additional remuneration).
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 Limited concerning Octavian (the relevant article described Mr Sangha as Mr Ghuman's business partner, and not company secretary/adviser as the taxpayer had stated).
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.

The tribunal noted that the items requested in the information notice were not numbered point by point and adopted the above numbering in their decision.

Following consideration of the evidence, the tribunal set aside, or altered, the requirements, as noted below:

Items 1 and 2 – these items were set aside, as HMRC had failed to establish that any of the information or documents requested in the information notice were statutory records. Further, HMRC had failed to show that the bank statements and accounts of Evolution Drinks were in Mr Sangha's power or possession.

Item 3 - this item was set aside, as HMRC were no longer seeking this document.

Item 4 - the requirement at item 4 was varied, to restrict the provision of bank statements for 2016/17, and those statements not already sent to HMRC for the previous year. HMRC had failed to make any submissions to show how Mr Sangha's tax position in the years 2015/16 and 2016/17 might be affected by undeclared income, if any, received in earlier years.

Items 5 and 6 - these requirements were varied, firstly to restrict the information and documents sought to the years under enquiry; secondly, to clarify the wording such that the accounts in question are any which Mr Sangha has the power to operate, rather than the wider term used by HMRC in the information notice.

Items 7 and 8 – the requirements were varied, as the tribunal determined that HMRC were entitled to know whether Mr Sangha received the payment in the years under enquiry.

Item 9 – this item was set aside. The tribunal agreed with the taxpayer's counsel that the request could not stand as it was drafted, as it was not sufficiently clear what was being asked for. The tribunal considered what was being requested and determined that HMRC had not demonstrated that the information was reasonably required to check Mr Sangha's tax position for the years under enquiry.

Item 10 – the tribunal agreed that a request for "comments" was too vague. The requirement in the information notice was varied to specify particular information, but only in relation to the period under enquiry.

Item 11 – this requirement was varied, to request only information relating to Mr Sangha. The tribunal considered that this item in the information notice was problematic, as it requested information which relates to Mrs Sangha's tax position, and the information notice was addressed to Mr Sangha.

Item 12 – this item was set aside. The tribunal considered that HMRC had failed to articulate with sufficient clarity what information they were seeking. The tribunal considered that the only cogent request for information or documents in item 12 was for a letter from NatWest, and found that, on the limited evidence and submissions available, HMRC had not demonstrated that this was reasonably required to check Mr Sangha's tax position for the years under enquiry.

The case decision is available at:

<https://www.casemine.com/judgement/uk/6682f619c8cba81d15ef303c#:~:text=were%20statutory%20records.,Mr.,requests%20for%20information%20and%20documents>

Practical considerations

In relation to the two above cases, the following are a summary of key points:

- The burden of proof rests on HMRC to show that an information notice has been validly issued, and that the requirements of Schedule 36 have been met;
- The onus is on HMRC to prove that items requested are reasonably required for the purpose of checking the taxpayer's position;
- HMRC also bear the burden of showing that any information or documents requested by an information notice are statutory records in relation to which there is no ability to bring an appeal;
- When dealing with an information notice, establish what is being requested (or is the requirement too vague?).
- Consider using the review process, and tribunal, as part of any challenge against an information notice (after exhausting options with the enquiry officer).

Contributed by Phil Berwick, Director at Berwick Tax Limited