



TC07177

**Appeal numbers: TC/2017/09344
TC/2017/09364
TC/2018/00132
TC/2018/00135
TC/2018/00443
TC/2018/01329**

*INCOME TAX/CORPORATION TAX – applications for closure notices –
whether HMRC had reasonable grounds for not issuing closure notices –
yes – applications refused*

*CORPORATION TAX – appeals against information notices under
Schedule 36 Finance Act 2008 – whether information reasonably required
for the purpose of checking tax position – appeals allowed in part*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL WOOLFORD	Appellant
PINE RIDGE CONSTRUCTION LIMITED	Appellant
PINE RIDGE HOMES LIMITED	Appellant
GLACIER MANAGEMENT SERVICES LIMITED	Appellant
HAVANNAH QUAY LAND LIMITED	Appellant
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	Respondents

TRIBUNAL: JUDGE ASHLEY GREENBANK

Sitting in public at Taylor House, Rosebery Avenue, London on 28 November 2018

Michael Woolford in person and for the other Appellants

Gary Cruddas, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. There are six matters before the Tribunal.

5 (1) The first is an application by Mr Michael Woolford to close an enquiry into his self-assessment tax return for the tax year 2015/16. This is appeal number TC/2017/09344.

10 (2) The second is an application by Pine Ridge Construction Limited (“PRC”) to close an enquiry into its company tax return for the accounting period ended 31 August 2016. This is appeal number TC/2017/09346.

(3) The third is an application by Pine Ridge Homes Limited (“PRH”) to close an enquiry into its company tax return for the accounting period ended 30 June 2016. This is appeal number TC/2018/00132.

15 (4) The fourth is an application by Glacier Management Services Limited (“GMS”) to close an enquiry into its company tax return for the accounting period ended 30 September 2016. This is appeal number TC/2018/00135.

20 (5) The fifth is an application by Havanna Quay Land Limited (“HQLL”) to close an enquiry into its company tax return for the period from 2 October 2013 to 31 October 2015. This is appeal number TC/2018/00443. HMRC have made an application for this application to be struck out under rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“FTR”) on the grounds that the Tribunal has no jurisdiction in relation to the proceedings.

25 (6) The sixth is an appeal by HQLL against an information notice issued by HMRC under paragraph 1 of Schedule 36 to the Finance Act 2008 (“FA 2008”) and penalties for non-compliance with the information notice. This is appeal number TC/2018/01329. The penalties in relation to this final appeal have been cancelled by HMRC and are no longer in
30 issue.

2. I have referred to PRC, PRH, GMS and HQLL together as the “appellant companies” in this decision notice. Each of the appellant companies is wholly-owned by Mr Woolford.

The hearing and the evidence

35 3. I was provided with bundles of documents by HMRC and by Mr Woolford, for the appellants.

4. The documents included five witness statements of Mr Mark Lamb, an officer of HMRC and two witness statements of Mr Woolford. Mr Lamb and Mr Woolford both gave evidence and were cross-examined on their statements.

40 Facts

5. The facts of each appeal are similar. However, for the sake of clarity I set them out in turn.

Mr Woolford (TC/2017/09344)

6. On 10 October 2017, HMRC wrote to Mr Woolford advising him that HMRC were undertaking a check of his self-assessment return for the tax year 2015-16 under section 9A of the Taxes Management Act 1970 (“TMA 1970”). The letter enclosed an information notice under paragraph 1 of Schedule 36 FA 2008.

7. On 16 November 2017, Mr Woolford wrote to HMRC appealing against the enquiry notice and the information notice.

8. On 23 November 2017, HMRC wrote to Mr Woolford. HMRC advised Mr Woolford that he would have to make an application to the Tribunal for the enquiry to be closed and notified him that he would need to request a review of the information notice or notify his appeal to the Tribunal.

9. On 19 December 2017, Mr Woolford made an application to the Tribunal to close the enquiry.

10. On 4 January 2018 HMRC wrote to Mr Woolford advising him that as he had not requested a review of the decision on the appeal against the information notice or notified the appeal to the Tribunal, his appeal was regarded as settled under section 49C TMA 1970.

PRC (Appeal number TC/2017/09364)

11. On 17 October 2017, HMRC wrote to PRC advising the company that HMRC were going to undertake a check of its company tax return for the accounting period ended 31 August 2016 under paragraph 24(1) Schedule 18 Finance Act 1998 (“FA 1998”). The letter enclosed an information notice to under paragraph 1 Schedule 36 FA 2008.

12. On 16 November 2017, Mr Woolford wrote to HMRC on behalf of PRC appealing against the enquiry and the information notice.

13. On 22 November 2017, HMRC advised PRC that it would have to make an application to the Tribunal for the enquiry to be closed and either request a review or notify the appeal against the information notice to the Tribunal.

14. On 19 December 2017, PRC applied to the Tribunal to close the enquiry.

15. On 4 January 2018, HMRC wrote to PRC advising the company that as it had not requested a review of the decision on the appeal against the information notice nor notified any appeal to the Tribunal the company’s appeal was regarded as settled by virtue of section 49C TMA 1970.

PRH (Appeal number TC/2018/00132)

16. On 20 November 2017, HMRC wrote to PRH advising the company that HMRC were undertaking a check of its company tax return for the accounting period ended 30 June 2016 under paragraph 24(1) Schedule 18 FA 1998. The letter enclosed a schedule of information requested.

17. On 14 December 2017, Mr Woolford wrote to HMRC on behalf of PRH appealing against the enquiry. In the letter, Mr Woolford also purported to appeal against an information notice even though, at this stage, no information notice had been issued to PRH. HMRC had only made an informal request for information in the schedule enclosed with their letter of 20 November 2017.

18. On 22 December 2017, HMRC issued an information notice under paragraph 1 Schedule 36 FA 2008 to PRH. The information notice requested the items originally requested in the schedule enclosed with the letter of 20 November 2017.

19. On 10 January 2018, HMRC advised PRH that it would have to make an application to the Tribunal for the enquiry to be closed. HMRC also advised PRH that, although it could appeal against the information notice issued on 22 December 2017, PRC's letter of 14 December 2017 predated the issue of any information notice. HMRC advised the company to lodge an appeal against the information notice which had now been issued within 30 days of its issue.

20. On 15 January 2018, PRH applied to the Tribunal to close the enquiry.

GMS (Appeal number TC/2018/00135)

21. On 20 November 2017, HMRC wrote to GMS advising the company that HMRC were undertaking a check of its company tax return for the accounting period ended 30 June 2016 under paragraph 24(1) Schedule 18 FA 1998. The letter enclosed a schedule of information requested.

22. On 14 December 2017, Mr Woolford wrote to HMRC on behalf of GMS appealing against the enquiry and the information notice. As in the case of PRH, in his letter, Mr Woolford also purported to appeal against an information notice even though, at this stage, no information notice had been issued to GMS.

23. On 22 December 2017, HMRC issued an information notice to GMS under paragraph 1 Schedule 36 FA 2008 to GMS. The information notice requested the items originally requested in the schedule enclosed with the letter of 20 November 2017.

24. On 10 January 2018, HMRC advised GMS that it would have to make an application to the Tribunal for the enquiry to be closed. HMRC also advised GMS that, although it could appeal against the information notice issued on 22 December 2017, GMS's letter of 14 December 2017 predated the issue of any information notice. HMRC advised GMS to lodge an appeal against the information notice which had now been issued within 30 days of its issue.

25. On 15 January 2018, GMS applied to the Tribunal to close the enquiry.

HQLL (Appeal numbers TC/2018/00443 and TC/2018/03129)

26. HQLL submitted dormant company accounts to Companies House for the period ended 31 October 2014. These are the only accounts that HQLL has ever submitted. HQLL has not submitted a company tax return for any period.

5 27. On 17 October 2017 HMRC issued an information notice to HQLL under paragraph 1 Schedule 36 FA 2008. The notice requested information in relation to properties acquired and held by HQLL between 2 October 2013 and 31 October 2015. Details of the information and documents requested in this information notice are set out at [101] below. The notice was issued to HQLL's registered office. HMRC was
10 unaware that HQLL was in the process of changing its registered office at the time.

28. On 22 November 2017 and 4 January 2018 HMRC issued penalty notices to HQLL charging the company a fixed penalty of £300 and further penalties of £410 for failing to provide the information and documents requested.

15 29. On 17 January 2018, HQLL made an application to the Tribunal to close the enquiry into the affairs of HQLL.

30. On 19 January 2018, Mr Woolford wrote to HMRC on behalf of HQLL enclosing a copy of the application.

20 31. On 30 January 2018, HMRC wrote to HQLL advising HQLL that HMRC had not opened an enquiry under paragraph 24(1) Schedule 18 FA 1988 and so HQLL could not make an application to close the enquiry. HMRC informed HQLL that it could have appealed against the information notice, but, as it had not done so within 30 days of its issue, HQLL would have to apply to make a late appeal.

25 32. On 8 February 2018, HQLL provided some of the information requested in HMRC's information notice relating to the acquisition and disposal of a property in Merthyr Tydfil. In particular, the letter stated that the property had been incorrectly purchased in the name of HQLL in June 2014, but the title had been correctly registered in the name of PRC in July 2014.

30 33. On 9 February 2018, HMRC issued a further penalty notice charging daily penalties for failing to provide information and documents requested in the information notice. (This penalty notice was issued before HMRC had received the letter dated 8 February 2018 to which I referred at [32] above.)

34. On 9 February 2018, HQLL notified its appeal against the information notice to the Tribunal.

35 35. On 26 February 2018, HMRC responded to HQLL's letter of 8 February 2018, setting out the information and documents that HMRC believed remained outstanding from the information notice. HMRC also issued an additional information notice under paragraph 1 Schedule 36 FA 2008 seeking further documents in relation to the acquisition and disposal of the property in Merthyr Tydfil. Details of the information and documents requested in this information notice are set out at [102] below.

36. On 19 April 2018, HMRC wrote to HQLL to cancel all penalties in relation to the information notice issued on 17 October 2017 as it had been returned undelivered (and had been addressed to the wrong company address). HMRC said it would regard the information notice as having been validly served on 4 January 2018, being the date on which HQLL accepted that it had received a copy of the notice.

The witness evidence

37. The witness evidence largely concerns the reasons for HMRC issuing the relevant notices of enquiry and information notices.

Mr Lamb's evidence

38. Mr Lamb says that he undertook a risk review of the affairs of Mr Woolford and the appellant companies. He identified the following risks in relation to their returns.

39. In Mr Woolford's return for the tax year 2015-16, Mr Lamb raised the following concerns.

(1) There were inconsistencies in the reporting of rental income compared with previous returns. For the tax year 2013-14, Mr Woolford's return showed rental income from two properties. The return for the tax year 2014-15 showed the disposal of one property for £190,000, but no rental income.

(2) There was a disparity between the remuneration paid to the sole director (Mr Woolford) as shown in the accounts of GMS and that disclosed in Mr Woolford's returns. Mr Woolford's returns showed salary received from GMS of £10,000 for the tax year 2014-15 and £8,059.92 for the tax year 2015-16. On the other hand, the accounts of GMS showed director's remuneration of £4,029 for the accounting period ended 30 September 2015 and £4,031 for the period to 30 September 2016. There was therefore an unexplained difference of £10,000 between the director's remuneration as shown in the accounts of GMS and the amounts disclosed in Mr Woolford's returns.

(3) The accounts for PRC for the year to 31 August 2015 disclosed that Mr Woolford lent the company £92,683 and the accounts for the year to 31 August 2016 showed that Mr Woolford lent the company a further £287,439. The accounts for PRH for the year to 30 June 2016 showed that Mr Woolford lent the company £17,779 in that year. However, Mr Woolford had no income from which to fund the monies lent to PRC and PRH or to service any borrowings that he may have incurred for that purpose.

(4) The tax returns of Mr Woolford did not disclose sufficient means to fund his living expenses.

40. In relation to the affairs of PRC, Mr Lamb had various questions arising from the accounting information.

(1) The company had incurred year on year losses. It started trading on 4 August 2014. The accounts for the period to 31 August 2015 disclosed losses of £105,076. The accounts for the year to 31 August 2016 showed further losses of £160,973.

5 (2) These sets of accounts disclosed wages of £71,820, payments to sub-contractors of £54,489, travelling expenses £14,665, rent paid of £10,800 and legal and professional fees of £17,555 all of which seem high in relation to the nature of the trade and the declared turnover.

10 (3) The accounts further disclosed that Mr Woolford lent the company £92,683 in the year to 31 August 2015 and a further £287,439 in the following year. These amounts seemed unsupportable in the light of Mr Woolford's available resources.

Mr Lamb said that the documents and information requested were required to enable him to test the accuracy of the accounting information.

15 41. In relation to the affairs of PRH, Mr Lamb also had various questions arising from the accounting information.

(1) PRC started trading on 18 June 2014. It too had incurred year on year losses. The first accounts were drawn up to 30 June 2015 and showed a small loss and no turnover. The accounts for the year ended 30 June 2016 showed further losses of £66,094 and no income.

(2) At the same time, the accounts showed material levels of expenditure including purchases of £182,300 and bank interest of £58,175.

25 (3) The accounts disclosed material borrowings. Bank loans and overdrafts amounted to £235,947. PRH had also borrowed from PRC and Mr Woolford.

Once again, Mr Lamb said that the documents and information requested were required to enable him to test the accuracy of the accounting information.

42. In relation to the tax affairs of GMS, Mr Lamb raised the following concerns.

30 (1) Once again, the accounts disclosed year on year losses. GMS started trading on 1 September 2014. The first accounts were to 30 September 2015 and disclosed losses of £27,490 with no turnover. The accounts for the year ended 30 September 2016 showed further losses of £38,646 and no turnover.

35 (2) The accounts also disclosed material levels of expenditure with no income.

(3) As noted above, there were discrepancies between the amounts shown as directors' remuneration in the accounts of GMS and Mr Woolford's returns.

40 (4) There was more evidence of inter-company borrowing and lending: accounts disclosed that GMS borrowed £42,109 from PRC.

43. In relation to the tax affairs of HQLL, Mr Lamb says the company was incorporated on 2 October 2013. The company filed dormant company accounts at Companies House for the period to 31 October 2014. No further accounts (dormant company or otherwise) had been filed. The company had not submitted a company tax return. However, HMRC had evidence from other sources, principally the Land Registry, which appeared to suggest that HQLL had been involved in a number of land and property transactions. If so, it would not be correct to regard the company as dormant. As the company had not filed a return, it was not possible to open an enquiry. So HMRC had issued an information notice to determine the true position.

10 *Mr Woolford's evidence*

44. Mr Woolford says that he is being unfairly targeted by HMRC because of his role as an adviser to and business associate of Mr Philip Bowles, his involvement as a key witness in criminal proceedings brought against Mr Bowles and his role as an adviser to Mr Bowles and a company owned by Mr Bowles, Ocean Developments Limited ("ODL"), in proceedings against HMRC. He produced extensive evidence of these proceedings.

45. Mr Woolford points to various facts as evidence of his being victimized by HMRC, in particular:

- 20 (1) information notices had been served on him and the appellant companies and enquiries had been opened in relation to his own tax affairs and those of the appellant companies simultaneously;
- (2) those information notices and enquires were issued or opened at or around the time at which HMRC and ODL were engaged in their dispute;
- 25 (3) Mr Woolford believed that HMRC had sought to prevent the winding up of HQLL because of his association with Mr Bowles, who owned shares in another company called Havannah Quay Limited;
- (4) no enquiries had been opened in relation to other companies that he owned which had not been associated with property development transactions in which Mr Bowles was involved.

46. In response to Mr Lamb's evidence concerning his own tax affairs, Mr Woolford gave the following explanation.

- 35 (1) He held only one let property (838b London Road, Sutton, Surrey) in the tax year 2013-14. The other property shown on his tax return was sold in 2008. The other property was shown in his tax return because it had not been deleted from the relevant software but all of his tax returns for tax years after the year in which the disposal was made show no rental income for the other property.
- 40 (2) The last rental payment for the property which was sold in tax year 2014-15 (838b London Road) was received in March 2014. His return for the tax year 2013-14 showed a full year's rental income. The property was then redecorated and before being sold on the open market

in August 2014. There was no undeclared income. The capital gain was fully disclosed.

5 (3) The only income that he had ever received from GMS was the salary of £8,059.92 shown on his tax return for the tax year 2015-16 and as shown in his P60. The amount of salary shown in his return for the tax year 2014-15 was £10,000. This amount was, in fact, salary from PRC as shown in his P60 for the tax year 2014-15. It was incorrectly identified as salary from GMS in the return.

10 47. In response to Mr Lamb's evidence regarding the trading position and financing of PRC and PRH, Mr Woolford made the following points in his evidence.

15 (1) The two companies were property development companies. It was inevitable that they would initially incur significant costs in the early years (which would then hopefully be recouped in later years as properties were sold or let). Mr Woolford gave detailed evidence of the losses that had accrued to PRC as a result of a failed development project. He also gave evidence of the losses that had accrued to PRH once again, in relation to its development projects.

20 (2) The loans to PRC and PRH as shown in the accounts had been funded by: loans to Mr Woolford of £53,000 from his father; net proceeds from the sale of an investment property of £74,220 which were declared in Mr Woolford's tax return for the tax year 2014-15; proceeds from the sale of Mr Woolford's father's flat which was his principal private residence of £247,165; the extraction of cash from Mr Woolford's pension fund of £93,301, which was declared on Mr Woolford's tax return for the tax year 2016-17; personal loans from a friend of £75,000 over a period of three years; and the remortgage of Mr Woolford's family home to provide funds of £215,000. Mr Woolford provided documentary evidence for the larger amounts attached to his witness statement. These funds were loaned to PRC and PRH, the balance was used for living expenses.

35 48. As regards the tax affairs of GMS, Mr Woolford also described how GMS had been established in anticipation of providing management services to a property development business in Cardiff. GMS had taken a lease of an office and other premises in Crawley in 2014. The losses incurred by GMS related to that project which had ultimately failed to materialize.

40 49. The title to the property in Merthyr Tydfil had been registered in the name of HQLL. This was a mistake by the solicitors involved. The funds for the purchase of the property had been provided by Mr Woolford. The property should have been transferred to PRC. The mistake was corrected and the property was subsequently registered in PRC's name.

45 50. I found Mr Woolford to be a credible witness. He accepted that some of the entries in his returns were not correct. However his explanations for those errors and his explanations of the matters of which HMRC had expressed concern were credible and consistent, and did not betray any intent on his part or the appellant companies to evade their tax liabilities.

The issues before the Tribunal

51. The issues before the Tribunal fall into three categories:

- (1) Mr Woolford's and the appellant companies' challenges to the validity of the notices of enquiry;
- 5 (2) Mr Woolford's and the appellant companies' request for closure notices to be issued in relation to all of the enquiries;
- (3) HQLL's challenges to the information notices that have been issued by HMRC to HQLL.

52. Mr Woolford also made an application to the Tribunal for an order or direction
10 that HMRC should be required to disclose documents relating to the process that had led HMRC to enquire into Mr Woolford's personal tax return and the company tax returns of the other appellants. I have dealt with this issue in the context of the first and second issues.

Notices of enquiry

15 *Relevant legislation*

53. Section 9A TMA permits HMRC to enquire into an individual's tax return. Section 9A(1) provides:

- (1) An officer of the Board may enquire into a return under section 8 or 8A of this Act if he gives notice of his intention to do so ("notice of
20 enquiry")—
 - (a) to the person whose return it is ("the taxpayer"),
 - (b) within the time allowed.

54. Sub-section (2) sets out the time allowed for an officer to give notice of his or her intention to enquire into a return. There has been no suggestion in this case that
25 the relevant notice was not given within the time allowed.

55. There is a similar provision permitting HMRC to enquire into company tax returns. It is found in paragraph 24 of Schedule 18 to the Finance Act 1998 ("FA 1998"). Paragraph 24(1) provides:

- (1) An officer of Revenue and Customs may enquire into a company
30 tax return if they give notice to the company of their intention to do so ("notice of enquiry") within the time allowed.

56. Sub-paragraphs (2) to (6) of paragraph 24 contain provisions which govern the time allowed for an officer to give notice of intention to enquire into a company tax return. Once again, there is no suggestion in this case that the relevant notices were
35 not given within the time allowed.

The parties' submissions

(a) The appellants' submissions

57. Mr Woolford says that he and the appellant companies have been unfairly targeted by HMRC's enquiries. In support of this submission, Mr Woolford points to:

5 (1) the fact that enquiries were opened against him and the appellant companies at or around the same time, which, he says, is unusual in the case of taxpayers that do not have a history of failing to meet their tax liabilities;

10 (2) HMRC's intervention to prevent the dissolution of HQLL more than one year after the company was put into liquidation.

58. Mr Woolford says that these facts are evidence of HMRC targeting of him and the appellant companies and that HMRC took these actions in response to his role in providing support to Mr Philip Bowles in litigation against HMRC relating to claims for land remediation relief made by ODL. In his submissions, Mr Woolford drew the Tribunal's attention to some of the details of that dispute.

59. Mr Woolford refers to these circumstances in support of:

20 (1) his contention that the issue of the notices of enquiry simultaneously against him and the appellant companies for the reasons set out above represented an abuse of power by HMRC and for that reason the notices of enquiry should be regarded as invalid; and

(2) an application for disclosure of documents relating to HMRC's decision to issue the notices of enquiry to him and the appellant companies.

(b) HMRC's submissions

25 60. Mr Cruddas, for HMRC, says that there is no evidence that Mr Woolford and the appellant companies have been unfairly targeted by HMRC:

30 (1) the relevant officer, Mr Lamb, had undertaken a risk review of Mr Woolford and his associated companies and identified specific risks relating to the return of Mr Woolford and the company tax returns of each of the appellant companies (other than HQLL) which justified the opening of an enquiry;

35 (2) in the case of HQLL, Mr Lamb had also identified specific risks, but as the company was purportedly dormant and had not submitted a company tax return, HMRC were unable to open an enquiry and so Mr Lamb had authorized the issue of an information notice to HQLL;

40 (3) in circumstances where HMRC had concerns about the tax affairs of connected or linked companies and their directors, such as in the case of Mr Woolford and the appellant companies, it was entirely appropriate for HMRC to open simultaneous enquiries (see, by way of example, the comments of Judge Mosedale in *Revenue & Customs Commissioners v*

Qualapharm Limited [2016] UKFTT 0100 (“*Qualapharm*”) at [60] and [61]).

5 61. All the evidence showed that the purpose of HMRC’s enquiries was to check the accuracy of the returns (or obtain information in the case of HQLL). That was a valid reason for the enquiries and not an abuse of power.

10 62. In any event, Mr Woolford’s allegation that HMRC’s actions were an abuse of power was not a matter for the Tribunal. The Tribunal had no jurisdiction to enquire into HMRC’s reasons for opening an enquiry. In this context, its jurisdiction was limited to determining whether the requirements of s9A TMA and paragraph 24(1) Schedule 18 FA 1998 were met.

Discussion

63. I will turn first to Mr Woolford’s first ground of appeal; that the issue of the notices of enquiry to him and the appellant companies represented an abuse of power and so the notices of enquiry should be regarded as improper and invalid.

15 64. As an initial point, Mr Cruddas challenges the jurisdiction of the Tribunal to determine whether or not HMRC has an improper motive for the issue of an enquiry notice. He says that the Tribunal is restricted in its enquiry to determining whether the requirements for the issue of an enquiry notice in s9A TMA or paragraph 24 Schedule 18 FA 1998 are met. Any question as to whether HMRC acted
20 unreasonably in deciding to issue a notice is a public law matter which can only be challenged by judicial review; the Tribunal has no jurisdiction in relation to public law matters.

65. I was not referred to any authority by Mr Cruddas in support of his submission, but, to an extent, I agree with it.

25 66. There is a line of cases (including *Revenue & Customs Commissioners v Hok Limited* [2012] UKUT 363 (“*Hok*”) and *Revenue & Customs Commissioners v Noor* [2013] UKUT 071 (“*Noor*”)) which sets out the limits of the jurisdiction of the Tribunal to hear matters of public law or to apply common law principles of fairness. The principles that I take from them are, in summary, as follows.

30 (1) The Tribunal is a creature of statute. It was created by section 3 Tribunals Courts and Enforcement Act 2007 “for the purposes of exercising the functions conferred on it under or by virtue of this Act or any other Act”. Its jurisdiction is therefore entirely statutory (*Hok*: [36], *Noor*: [25]).

35 (2) The Tribunal has no judicial review jurisdiction. It has no inherent jurisdiction equivalent to that of the High Court and no statutory jurisdiction equivalent to that of the Upper Tribunal which has a limited jurisdiction to deal with certain judicial review claims (*Hok*: [41]–[43], *Noor*: [25]–[29]).

40 (3) This does not mean that the Tribunal never has any jurisdiction to consider public law questions or to apply common law principles of fairness. It may have jurisdiction to decide questions of public law or to

apply such principles in the course of exercising the jurisdiction which it does have (*Hok*: [52], *Noor*: [73]).

5 (4) In each case therefore when assessing whether a particular public law point or common law issue is one that the Tribunal can consider, it is necessary to consider the specific jurisdiction that the Tribunal is exercising and whether the particular point that is sought to be raised is one that falls to the Tribunal to consider in either exercising that jurisdiction or deciding whether it has jurisdiction.

10 (5) As the Tribunal's jurisdiction is entirely statutory, this is ultimately a question of statutory construction.

67. I am not aware of any provision which permits a taxpayer to appeal to the Tribunal against the issue of an enquiry notice. No such provision was brought to my attention by the parties. The Tribunal does not have an inherent jurisdiction to review the conduct of HMRC in the exercise of its powers. So, in the absence of an express
15 statutory provision providing jurisdiction to the Tribunal, it must follow that the Tribunal does not have jurisdiction to determine the validity or invalidity of the notices of enquiry as a separate issue as suggested by Mr Woolford. If Mr Woolford and the appellant companies wish to pursue a declaration that the issue of the enquiry notices was invalid, they must do so by judicial review.

20 68. That does not mean, however, that the circumstances in which the notices of enquiry were issued (or were purported to be issued) are not relevant to other matters that are within the jurisdiction of the Tribunal. For example, the Tribunal has jurisdiction to give a direction to HMRC to issue a closure notice (in s28A TMA and in paragraph 33 Schedule 18 FA 1998). Whether or not public law issues which go to
25 the validity of the enquiry notices should be taken into account in considering that issue is a matter of statutory construction of the provisions which give the Tribunal jurisdiction. I will therefore consider the extent to which the matters of which Mr Woolford complains are relevant to the applications to close the enquiries in the context of my consideration of that issue.

30 **Closure notices**

Relevant legislation

69. Once an enquiry has been opened, there is no statutory time limit on the length of an enquiry. However, the taxpayer has an important right to apply to the Tribunal for a direction requiring HMRC to issue a closure notice.

35 70. For individual taxpayers, that right is contained in s28A(4) TMA. It provides:

(4) The taxpayer may apply to the tribunal for a direction requiring an officer of the Board to issue a partial or final closure notice within a specified period.

40 71. On an application under s28A(4), the Tribunal must give a direction unless it is satisfied that HMRC have reasonable grounds for not giving a partial or final closure notice within a specified period. Section s28A(6) provides:

(6) The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing the partial or final closure notice within a specified period.

72. Similar provisions apply in relation to company tax returns. For corporate taxpayers, the right for the taxpayer to apply for a closure notice is contained in paragraph 33(1) Schedule 18 FA 1998. As is the case with individual taxpayers, the Tribunal must give a direction unless it is satisfied that HMRC have reasonable grounds for not giving a partial or final closure notice within a specified period. This provision is found in paragraph 33(3) Schedule 18 FA 1998. In both cases, the wording is similar to that found in the relative provisions in s28A TMA.

The parties' submissions

(a) The appellants' submissions

73. Mr Woolford relies on his submissions that he and the appellant companies have been unfairly targeted by HMRC to which I refer at [57] to [59] above.

(b) HMRC's submissions

74. Mr Cruddas also refers to many of the matters to which he referred in the context of Mr Woolford's challenges to the notices of enquiry (see [60] to [62] above). In essence, his argument is as follows.

(1) The check into Mr Woolford's self-assessment return for the year ending 5 April 2016 is to check the accuracy of that return. The notice of enquiry into Mr Woolford's return was validly issued in accordance with section 9A TMA.

(2) HMRC have identified a number of risks in relation to Mr Woolford's return. These include:

(a) concerns over the non-declaration of property income or gains on the disposal of properties;

(b) a disparity between remuneration declared on Mr Woolford's return and that declared in the accounts of GMS;

(c) a lack of resources to fund the loans to PRC and PRH; and

(d) a lack of means to fund living expenses.

(3) The enquiries into PRC's return for the accounting period ending 31 August 2016 and PRH's return for the accounting period ended 30 June 2016 were validly issued in accordance with paragraph 24(1) Schedule 18 FA 1998.

(4) HMRC have identified a number of risks in relation to those returns.

(a) PRC and PRH sustained year on year losses.

(b) The level of expenditure in the accounts appeared high in relation to the nature of trade and declared turnover.

(c) PRC and PRH could not afford the borrowing costs of the loans made to them.

(5) The enquiry into GMS's return for the accounting period ending 30 September 2016 was validly issued in accordance with paragraph 24(1) Schedule 18 FA 1998.

(6) HMRC have identified a number of risks in relation to that return.

(a) GMS sustained significant losses.

(b) The level of expenditure in the accounts appeared high in relation to the nature of trade and declared turnover.

(c) GMS could not afford the borrowing costs of the loans made to it.

(d) There was a discrepancy between the amount of director's remuneration shown in its accounts and the amount shown on Mr Woolford's return.

(7) In each of the above cases, it was entirely appropriate that HMRC should be able to enquire into these discrepancies in order to determine if the returns were accurate.

(8) No enquiry notice had been issued to HQLL as it had not submitted a company tax return. The Tribunal could not order the closure of an enquiry that did not exist. The application for a closure notice in relation to HQLL should be struck out under FTR rule 8(2)(a).

Discussion

(a) Applications for closure notices by Mr Woolford, PRC, PRH and GMS

75. I will deal first with the applications for closure notices by Mr Woolford and each of the appellant companies other than HQLL.

76. As I have mentioned above, the right of an individual taxpayer in section 28A(4) TMA (and the equivalent right of a corporate taxpayer in paragraph 33(1) Schedule 18 FA 1998) to request the issue of a closure notice is an important one. Its clear purpose is to provide protection for the taxpayer against HMRC enquiries being left open for protracted periods (see *Jade Palace Limited v. Revenue & Customs Commissioners* [2006] STC (SCD) 419).

77. Furthermore, it is clear from the wording of section 28(6) TMA (and paragraph 33(3) Schedule 18 FA 1998) that the presumption is that an application should be granted – and the Tribunal should order that a closure notice is issued – unless HMRC is able to demonstrate that there are reasonable grounds to refuse the application.

78. In the present case, in my view, HMRC have demonstrated that there are reasonable grounds to refuse the applications.

(1) Mr Lamb identified in his evidence various matters which merit further enquiry in relation to each of the returns. Although there may be some doubts as to whether the level of concern that Mr Lamb expresses

5 in relation to some of these matters is entirely justified – for example, in the cases of PRC and PRH, it is not particularly surprising that a property development company incurs material losses in the early years of a development project – there are clearly matters including some discrepancies between the various returns in respect of which it is legitimate for HMRC to raise further enquiries.

10 (2) The application for a closure notice has been raised in all cases only a few months after the relevant enquiry has been opened. There has been no time for HMRC to complete their enquiries into the relevant returns. This is not a case in which an enquiry has been left open without good reason for a lengthy period.

15 79. Mr Woolford says that he has been unfairly targeted and he points to the opening of the enquiries in relation to his return and those of the appellant companies simultaneously as evidence of that. I cannot accept the inference that Mr Woolford invites me to draw from the fact that enquiries have been opened in relation to Mr Woolford’s return and the appellant companies’ returns at the same time. It is clear from the evidence that there are good reasons for HMRC to wish to check that the presentation of the information in relation to transactions between Mr Woolford and appellant companies or between appellant companies themselves in the different returns is consistent. This applies in particular to the loans between Mr Woolford and PRC and PRH; and the transactions involving in HQLL. There also appears to be a discrepancy in the recording of the directors fees paid to Mr Woolford in the accounts of GMS. The simultaneous opening of the enquiries is easily justified by a desire to ensure that a consistent approach has been taken and is not of itself evidence of any improper motive.

25 80. Mr Woolford has suggested that HMRC acted on improper motives in opening simultaneous enquiries, but to my mind it is perfectly legitimate of HMRC to seek to verify the tax treatment of the various transactions between Mr Woolford and the appellant companies and between the appellant companies themselves in this way. Whilst I can understand Mr Woolford’s concern that the opening of enquiries at or around the time at which he was involved in supporting Mr Bowles’s dispute with HMRC may not be coincidental, Mr Lamb has advanced more than adequate reasons for HMRC to open enquiries. Mr Woolford’s concern cannot preclude the exercise of HMRC’s powers to confirm that the correct amount of tax has been paid.

35 81. In the course of his evidence, Mr Woolford gave a credible explanation of some of the matters which Mr Lamb has raised and explained some of the discrepancies between the returns and, on occasions, acknowledged that mistakes had been made. However, these explanations and the relevant information should have been provided to HMRC in response to their enquiries rather than to the Tribunal in support of an application to close them.

40 82. For these reasons, I dismiss these applications.

(b) Application for closure notice by HQLL

83. The position of HQLL is rather different.

84. HQLL has not filed the return. HMRC has not opened an enquiry under paragraph 24(1) Schedule 18 FA 1998 because there is no return into which HMRC can enquire. HQLL has made an application for a direction from the Tribunal to HMRC to issue a closure notice under paragraph 33(1) Schedule 18 FA 1998.

5 85. Mr Cruddas says this is not an application which HQLL can make. He asks the Tribunal to strikeout the application on the grounds that the Tribunal has no jurisdiction in relation to the proceedings under FTR rule 8(2)(a).

86. The Tribunal does have jurisdiction to hear applications for a direction to issue a closure notice (under paragraph 33(1) Schedule 18 FA 1998). That is the application
10 that has been made in this case. The Tribunal has jurisdiction to hear such an application.

87. That having been said, the issue of a closure notice, whether partial or final, is the process by which any matter to which an enquiry into a return relates or the entire enquiry into a tax return is completed (paragraph 32 Schedule 18 FA 1998). The
15 closure notice must therefore relate to an enquiry or a specific matter to which an enquiry into a return relates.

88. A closure notice can only therefore be issued in relation to an enquiry into a return. There is no enquiry into a return in this case. Whether that is a jurisdictional matter – i.e. that the Tribunal does not have jurisdiction because one of the pre-
20 conditions for the exercise of its jurisdiction (the existence of an open enquiry) has not been met – or a substantive matter – i.e. that the Tribunal having jurisdiction has found that one of the conditions for the grant of the application (the existence of an open enquiry) has not been met – does not matter in this case; the result is that same. I would prefer the latter. For that reason, I refuse the application for a direction in the
25 case of HQLL.

Application for disclosure

89. I will now deal with Mr Woolford’s application for disclosure of documents relating to HMRC’s decision to issue the notices of enquiry to him and the appellant companies.

30 *The Tribunal Rules*

90. The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“FTRs”) permit the Tribunal to make orders and directions which require a party to disclose documents.

FTR rule 16 provides, so far as relevant:

35 **16.— Summoning or citation of witnesses and orders to answer questions or produce documents**

(1) On the application of a party or on its own initiative, the Tribunal may—

(a) ... ;

(b) order any person to ... produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) ...

5 (3) No person may be compelled to ... produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

...

FTR rule 5(3) also provides:

10 (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction—

(a) ...

(b) ...;

(c) ...;

15 (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;

...

20 91. The Tribunal therefore has a discretion to order, under FTR rule 16, or direct, under FTR rule 5(3)(d), that any party produce a document to the Tribunal and/or another party.

The parties' submissions

92. Mr Cruddas also opposes Mr Woolford's application for disclosure of documentation regarding the selection of Mr Woolford and the appellant companies for enquiry. He makes the following points:

25 (1) HMRC did not have to explain its reasons for opening an enquiry or issuing an information notice (see Judge Mosedale in *Qualapharm* at [110]) so no purpose could be served in ordering disclosure;

30 (2) although the General Data Protection Regulation (EU) 2016/679 ("GDPR") provided a right of access to a natural person's personal data, there was no right to information relating to the appellant companies as they were not natural persons;

(3) HMRC was not prepared to release its risk analysis on a discretionary basis;

35 (4) Mr Woolford had been advised of the correct procedure for escalating his complaint about HMRC's actions.

40 93. Once again, Mr Woolford relied on his general submission that he and the appellant companies have been unfairly targeted by HMRC. He says that the disclosure of information regarding the decision to open enquiries was necessary for him and the appellant companies to establish that HMRC have acted on improper motives in doing so.

Discussion

94. Neither party in their submissions properly addressed the question of the basis on which the Tribunal should exercise its discretion to order or direct the disclosure of documents.

5 95. The FTRs do not contain specific rules which govern the exercise of the Tribunal's discretion in these cases. It follows that the guiding principle for the Tribunal in exercising its powers to order or direct the disclosure of documents is to ask what is required to enable it to deal with the case "fairly and justly", in accordance with the overriding objective in FTR rule 2(1).

10 96. FTR rule 2(2) sets out some examples of the factors that the Tribunal should take into account in the exercise of its powers to deal with the case fairly and justly. These include "dealing with the case in a ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties" (FTR rule 2(2)(a)). The application of the overriding
15 objective therefore encompasses a concept of proportionality and it will be appropriate to consider, in this context, whether an order or direction for disclosure would be disproportionate in terms of other factors such as the nature and importance of the proceedings, the burden imposed upon the disclosing party and the likely relevance of the documents or information requested to the issues in the case.

20 97. There are also clearly accepted valid objections to disclosure. The Tribunal will respect valid claims for privilege or public interest immunity in relation to relevant documents. It is also accepted that that, in considering the exercise of its powers, the Tribunal should have regard to whether the documents are likely to be confidential in nature.

25 98. I have considered Mr Woolford and the appellant companies' application in this case in the light of these principles. I have decided to reject the application. My reasons are set out below.

30 (1) As I mentioned at [67] above, the Tribunal does not have jurisdiction to determine as a standalone matter whether or not HMRC has acted on improper motives in initiating enquiries into the tax affairs of Mr Woolford and the appellant companies. There is therefore no matter before the Tribunal to which the application for disclosure is directly relevant.

35 (2) The information of which Mr Woolford and the appellant companies request disclosure may be of some relevance to the consideration of the applications for closure notices to which I refer above. However, that relevance is at best peripheral. As I have discussed at [75] to [82] above, HMRC has identified matters in the relevant returns which merit further enquiry and, given the nature of those matters, it is entirely appropriate
40 that enquiries are opened into the returns of Mr Woolford and the appellant companies at the same time. Furthermore, the applications for closure notices have been made at a time which has allowed HMRC little time to make appropriate enquiries.

5 (3) Any evidence that there may be other motives for the opening of some or all of the enquiries would not alter my view that it is not appropriate to direct the issue of closure notices in these cases at this time. It would therefore be disproportionate to order or direct disclosure of information that is of limited relevance to the question before the Tribunal and is unlikely to assist the Tribunal materially in resolving the issues that are before it.

Information notice

Background

10 99. Mr Woolford has concentrated his submissions on his applications for closure notices in relation to the relevant enquiries. No formal appeal has been made against the information notices issued to Mr Woolford, PRH, PRC or GMS.

100. Two information notices under paragraph 1 Schedule 36 FA 2008 have been issued to HQLL; the first on 17 October 2017 and the second on 26 February 2018.

15 101. The information notice issued on 17 October 2017 requested the following information and documents:

20 1. Please supply a list of all land/properties acquired by the company between 2 October 2013 and 31 October 2015. This should include the description of the land/property, when acquired, the cost and the Land Registry title number.

2. For each purchase please state the source of the funding and provide documentary evidence in support.

25 3. Please supply a list of all land/properties sold by the company between 2 October 2013 and 31 October 2015. This should include the description of the land/property, when sold, the disposal value and the Land Registry title number.

4. For each disposal please advise what work was carried out between acquisition and disposal or what planning permission(s) were sought and obtained.

30 5. Please confirm if records are kept on computer. If so, please let me know what records are held and what type of software is used. If any of the above documentation is computerised, they form part of the prime records of the business and are regarded as documents in their own right. Providing a copy of the computer records at the outset of my enquiry should assist me to conclude it more quickly. We have a data handling specialist who can help you give us the data that we need easily and securely. They can also let you know which types of media we can accept and about the alternative methods by which you can submit the data to us. If such records exist, please contact Mr M Mawjood on [details omitted].

35

40

102. Following the provision of certain information by HQLL in response to the first information notice, a second information notice was issued on 26 February 2018. In it, HMRC requested the following information and documents.

Please supply copies of the documentation regarding the acquisition and subsequent disposal of the land or property at The Former Vicarage, Church Street, Penydarren. This should include:

5 For the purchase, a copy of the original instruction, copies of any exchanges of correspondence between you and the solicitors and any other party regarding the purchase and copies of the conveyancing documents.

10 For the transfer to Pine Ridge Construction Limited, a copy of the instruction to transfer ownership, copies of any exchanges of correspondence between you and the solicitors and any other party regarding the transfer and copies of the conveyancing documents to transfer the property.

103. As I have mentioned above, HQLL appealed against the information notice on 9 February 2018. At that stage, the only information notice that had been issued to HQLL was the notice dated 17 October 2017. The parties have, however, treated the appeal as being applicable to both notices. I have adopted the same approach. This seems the most practical way forward, in particular, given that the second notice is clearly derivative of the first.

Relevant legislation

20 104. Schedule 36 FA 2008 contains provisions relating to HMRC's powers to require taxpayers and other persons to provide information and documents to HMRC.

105. Paragraph 1 of Schedule 36 contains the basic power to require a taxpayer to provide information and documents. It provides:

1 Power to obtain information and documents from taxpayer

25 (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,

30 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.

35 106. Paragraph 21 of Schedule 36 sets out certain limits on HMRC's powers to issue a taxpayer notice in cases where a return has been issued. It provides, so far as relevant:

21

(1) ...

40 (2) Where a person has made a tax return in respect of a chargeable period under paragraph 3 of Schedule 18 to FA 1998 (company tax returns), a taxpayer notice may not be given for the purpose of checking that person's corporation 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—

5

(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”),

10

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

15

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

(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,

20

(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.

25

(7) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking the person's position as regards any tax other than income tax, capital gains tax or corporation tax.

30

(8) Condition D is that the notice is given for the purpose of obtaining any information or document that is required (or also required) for the purpose of checking the person's position as regards any deductions or repayments of tax or withholding of income referred to in paragraph 64(2) or (2A) (PAYE etc).

(9) In this paragraph, references to the person who made the return are only to that person in the capacity in which the return was made.

35

107. Paragraph 29 of Schedule 36 provides for a right of appeal against a taxpayer notice. It provides:

29 Right to appeal against taxpayer notice

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

40

(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.

(3) Sub-paragraph (1) does not apply if the tribunal approved the giving of the notice in accordance with paragraph 3.

108. The right to appeal does not therefore apply to a requirement in a taxpayer notice to provide information or documents that form part of the taxpayer's "statutory records". The definition of "statutory records" for this purpose is found in paragraph 62 of Schedule 36:

5

62 Statutory records

10 (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

15 (b) any other enactment relating to a tax,
subject to the following provisions of this paragraph.

(2) To the extent that any information or document that is required to be kept and preserved under or by virtue of the Taxes Acts—

(a) does not relate to the carrying on of a business, and

20 (b) is not also required to be kept or preserved under or by virtue of any other enactment relating to a tax,

it only forms part of a person's statutory records to the extent that the chargeable period or periods to which it relates has or have ended.

25 (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.

109. In essence therefore, information or documents are "statutory records" if they are information or documents which a person is required to keep and preserve under or by virtue of provisions contained elsewhere in our tax legislation. The definition is not free-standing; it cross-refers to other provisions.

110. I was not referred by either of the parties to any particular provision pursuant to which HQLL was required to keep and preserve information or documents. From the line of Mr Cruddas's argument, I understood him to be referring to the general obligation on companies that may be required to file a company tax return to keep and preserve documents, which is found in paragraph 21 Schedule 18 FA 1998. That paragraph requires a company to keep "all such records as may be needed to enable it to deliver a correct and complete return for the period".

The parties' submissions

40 111. On behalf HMRC, Mr Cruddas makes the following submissions.

(1) The only information notice that is under appeal is the information notice that was issued to HQLL. No appeal has been received in relation to the other information notices.

5 (2) The documents and information requested in the information notices are “statutory records”. This is because all the information and documents would have been required by Mr Woolford and the appellant companies to enable them to complete their tax returns. There is no right to appeal against a request for statutory records.

10 (3) If and to the extent that the information and documents are not “statutory records”, they were reasonably required by HMRC to check the accuracy of the relevant returns.

112. On behalf of himself and the appellant companies Mr Woolford relies on his arguments in support of his applications for closure notices in relation to the relevant enquiries. He says that he and the appellant companies have been unfairly targeted by
15 HMRC. He says that he has provided the information to show that even if there are errors in his returns, they are minor inaccuracies and there is no overall loss of tax.

Discussion

113. Mr Woolford’s submissions concentrated on his arguments that the relevant enquiries should be closed. No formal appeal has been made against the information
20 notices issued to Mr Woolford, PRH, PRC or GMS. The only appeal before the Tribunal in relation to an information notice relates to the information notice served on HQLL. As I have mentioned at [103] above, I have treated this appeal as applicable to both of the notices that have been issued to HQLL.

114. In his skeleton argument, Mr Cruddas referred to the fact that the appeal against
25 the information notice had been made outside the 30 day period permitted for an appeal. He did not press this point in argument before the Tribunal. In any event, I allow any application to make a late appeal.

(1) HMRC has already accepted that the information notice that was issued on 17 October 2017 was not received by the company until 4
30 January 2018. HQLL notified its appeal to the Tribunal on 9 February 2017. This is only six days after the expiry of the 30 day period in which HQLL was permitted to appeal having taking into account HMRC’s acceptance that the information notice was not received until 4 January.

(2) Mr Woolford has not provided me with any reason for the further
35 delay. However, the delay is minor and there has been no material prejudice to HMRC. HMRC has throughout been aware that HQLL was challenging the issue of the information notice whether that be through HQLL’s attempts to close the enquiry (which had not been opened) or through its appeal to the Tribunal in relation to the information notice
40 itself.

115. Mr Cruddas’s first point is that all of the information and documents requested by the information notices are “statutory records” within paragraph 62 Schedule 36

FA 2008 and there is no right of appeal against a request for information or documents that form part of HQLL's statutory records.

5 116. Statutory records are defined in paragraph 62 Schedule 36 FA 2008 as information or documents which a taxpayer is required to "keep and preserve" under the terms of enactments related to tax. As I have mentioned, Mr Cruddas's argument appeared to be that all of the documents and information requested by the information notices are statutory records because they were information and documents which HQLL require in order to enable it to deliver a correct and complete return for the period (within paragraph 21 Schedule 18 FA 1998).

10 117. There is initial difficulty in applying this test. Mr Cruddas in his skeleton argument appeared to accept that the burden of proof in relation to whether or not documents and information requested by the information notices are reasonably required for the purposes of checking the tax position of HQLL (as required by paragraph 1 Schedule 36 FA 2008) falls on HMRC. The implication of his argument
15 was that he also accepted that HMRC bore the burden of proof in establishing that the documents and information requested by the information notices were "statutory records".

118. Neither party referred me to any authority for this position. However, if it is correct - and my brief review of the authorities suggested that there may be arguments
20 both in favour or against that proposition¹ - Mr Cruddas is presented with a problem in demonstrating that HQLL reasonably required the information and documents in order to complete his return. Without further knowledge of the transactions which HQLL undertook (if any), it is difficult to determine whether or not HQLL made any income or gains which would be required to be included in a return or indeed if it was
25 required to complete a return in the first place. However, for the most part, I do not need to determine this point given the conclusions that I have reached on the other issues and which I have set out below.

119. On the assumption that the information and documents requested by the information notices are not "statutory records", the question that I need to determine
30 is whether or not the documents and information are reasonably required for the purposes of checking HQLL's tax position within paragraph 1 Schedule 36.

120. The first information notice (issued on 17 October 2017) required HQLL to provide details of the transactions involving the purchase and sale of real estate which it had undertaken in the period between 2 October 2013 and 31 October 2015. Mr
35 Lamb gave evidence that this request was made because HMRC became aware that HQLL had been engaged in a land transaction from other sources, principally entries on the register at the Land Registry.

121. Having become aware of that transaction, the information in relation to real estate transactions carried out by HQLL in the relevant period was reasonably
40 required to check the tax position of HQLL. The request was informed by the information that Mr Lamb had received. The request was time-limited. It was

¹ For a summary: see the review of the case law by the First-tier Tribunal (Judge Reston and Helen Myerscough) in *Joshy Mathew v HMRC* [2015] UKFTT 139 (TC) at [65] to [92]

restricted to real estate transactions (items 1 and 3 of the information notice), the funding of the transactions (item 2) and any work done on the property between the acquisition and disposal and any planning permission obtained in relation to the property (item 4). The request was both appropriate and proportionate.

5 122. HQLL did, of course, respond to that request. It provided details of the acquisition and sale of the property at Merthyr Tydfil. The provision of this information prompted the issue of the second information notice (on 26 February 10 2018) requesting further documentation in relation to the sale and purchase of that property. Insofar as that request relates to copies of the conveyancing documents for the purchase and subsequent sale of the property, in my view, the information must also be regarded as reasonably required to establish the tax position of HQLL for the period.

123. I do not agree that the other documents requested in that information notice are reasonably required in order to check the tax position. The remainder of the 15 documents requested are correspondence. Insofar as that documentation constitutes correspondence between HQLL and its solicitors that correspondence is likely to be privileged; it is not reasonably required in order to check the tax position of the company.

124. As regards the broader request for correspondence between the company and 20 any other person relating to the purchase of the Merthyr Tydfil property, once again, I do not accept that this correspondence is reasonably required to check the tax position. The request is too broad and too vague. The correspondence could cover any number of matters of no relevance at all to the tax position of HQLL. The starting point must be that HMRC should be able to ascertain the tax position of 25 HQLL from the conveyancing documents and the information provided pursuant to the first information notice. If there are matters which arise from the conveyancing documents and on which HMRC requires further information in order to determine the correct position, HMRC can make a more specific request.

125. Nor do I accept that these items of correspondence are “statutory records”. In 30 order for the correspondence to constitute statutory records, the correspondence would have to be needed in order “to enable HQLL to deliver a correct and complete return” (paragraph 21 Schedule 18 FA 1998). If the burden is on HMRC to show that the documents that it has requested constitute statutory records, it has not discharged that burden. But, in any event, for similar reasons, it is far from clear why HQLL 35 would require such correspondence to enable it to deliver a correct return.

126. For this reason, I allow HQLL’s appeal in relation to the second information notice insofar as it related to documents other than the conveyancing documents.

Conclusion

127. In conclusion, therefore:

40 (1) I dismiss the applications for directions for closure notices in relation to the enquiries into the returns of Mr Woolford, PRC, PRH and GMS;

(2) I dismiss the application for a direction for a closure notice in the case of HQLL;

(3) I refuse the application for disclosure of documents relating to HMRC's decision to issue the notices of enquiry to Mr Woolford and the appellants companies;

(4) I dismiss HQLL's appeal against the information notice issued on 17 October 2017;

(5) I allow HQLL's appeal in part against the closure notice issued on 26 February 2018. The information notice dated 26 February 2018 should be treated as varied so that it is in the form set out in the Appendix to this decision notice.

128. HQLL has already provided some information in response to the first information notice. HQLL should provide the remainder of the information required by the first information notice (if any) and the information required by the second information notice as varied by this decision within 30 days of the issue of this decision notice.

Right to apply for permission to appeal

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

130. There is no right of appeal against the decision in relation to the information notices (see paragraph 32(5) Schedule 36 FA 2008).

131. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ASHLEY GREENBANK
TRIBUNAL JUDGE**

RELEASE DATE: 31 MAY 2019

APPENDIX

Information notice issued on 26 February 2018 as varied by this decision

5 Please supply copies of the documentation regarding the acquisition and subsequent disposal of the land or property at The Former Vicarage, Church Street, Penydarren being:

10 (1) copies of the conveyancing documents for the purchase of the property by the company; and

(2) copies of the conveyancing documents for the transfer of the property to Pine Ridge Construction Limited.