



Neutral Citation: [2023] UKFTT 00407 (TC)

Case Number: TC08812

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/11413

*INCOME TAX – information notice – Schedule 36 Finance Act 2008 – clinical consultancy fees – whether omission on personal tax return – whether fully declared via a company – discrepancy in company turnover per accounts and lodgements per personal bank statements – reduction in shareholder funds – whether information requests ‘reasonably required’ for checking the taxpayer’s personal tax position – burden of proof – **appeal dismissed***

Heard on: 9 March 2023

Judgment date: 04 May 2023

Before

**TRIBUNAL JUDGE HEIDI POON
SHAMEEM AKHTAR**

Between

EDWARD LAM SHANG LEEN

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Mr Tony Synnott, Director of Lochside Business Services Limited

For the Respondents: Mr Liam Ellis, Litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal by Dr Edward Lam Shang Leen (the ‘appellant’) against an Information Notice (the ‘**Notice**’) issued by the respondents (‘HMRC’) on 25 November 2021, following an enquiry being opened into the appellant’s self-assessment return for the tax year 2017-18.

2. The issue for determination is whether HMRC have met the burden in proving that the items requested on the Notice are ‘reasonably required by the officer for the purpose of checking the taxpayer’s tax position’ pursuant to paragraph 1 of Schedule 36 to the Finance Act 2008 (‘**Sch 36 FA 2008**’).

EVIDENCE

3. In terms of documentary evidence, the Tribunal has been provided with a core hearing bundle of 295 pages, of which 86 pages relate to legislation and case law. At the end of the hearing, the Tribunal gave verbal direction for HMRC to serve further documents which had been referred to during the hearing but not included in the bundle. The documents lodged post-hearing are in relation to the company GRI Research Laboratories Limited (‘**GRI**’). The appellant is a director-shareholder of GRI, and the documents are in relation to the following Accounting Period End (‘**APE**’):

- (1) The company accounts for GRI for APE 31 January 2017;
- (2) The company accounts for GRI for APE 31 January 2018;
- (3) The corporation tax computation for GRI for APE 31 January 2017;
- (4) The corporation tax computation for GRI for APE 31 January 2018, which is also included in the bundle (pp64-67).

4. For witness evidence, HMRC called Officer Cara Campbell, who is the decision maker for the issuance of the Notice. We find Officer Campbell to be a credible witness and accept her evidence as to matters of fact.

RELEVANT LEGISLATION

5. The provisions under Sch 36 FA 2008 relevant to this appeal are as follows:

- (1) HMRC’s powers to obtain information and documents from a taxpayer are provided under para 1, which states as follows:

‘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 provide a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer’s tax position.’

- (2) Where an information notice to a taxpayer after a tax return has been submitted, para 21, which has as its heading, ‘*Taxpayer notices following tax return*’, provides for certain conditions to be met before a taxpayer notice can be issued, of which Conditions A and B are directly relevant to this appeal.

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

- (a) the return, or
- (b) a claim or election [...],

and the enquiry has not been completed so far as relating to the matters to which the taxpayer notice relates.’

‘21 (6) Condition B is, as regards the person, an officer of Revenue and Customs has reason to suspect that –

- (a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,
- (b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or
- (c) relief from relevant tax given for the chargeable period may be or have become excessive.’

(3) The legislation governing appeals against information notices is provided under Part 5 of Sch 36, of which para 29 states:

‘29 (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal to the tribunal 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. ...’

(4) The Tribunal’s jurisdiction on an appeal against an information notice is provided under para 32, of which sub-para 32(3) states:

‘32 (3) On an appeal that is notified to the tribunal, the tribunal may –

- (d) confirm the information notice or a requirement in the information notice,
- (e) vary the information notice or such a requirement, or
- (f) set aside the information notice or such a requirement.

(5) The Tribunal’s decision on an appeal against an information notice does not carry further right of appeal, and is final, as expressly set out under sub-para 32(5):

‘32 (5) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 a decision of the tribunal on an appeal under this Part of this Schedule is final.’

6. For interpretation, Part 9 (paras 58 to 64) contains the statutory definitions of certain terms used in Sch 36 FA 2008, which includes:

General interpretation

58 In this Schedule –

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

...

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

Tax position

64 (1) In this Schedule, except as otherwise provided, “tax position”, in relation to a person, means the person’s position as regards any tax, including the person’s position as regards –

- (a) past, present and future liability to pay any tax,
- (b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax, and
- (c) claims, elections, applications and notices that have been or may be made or given in connection with the person’s liability to pay any tax,

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

THE FACTS

7. The appellant is a clinical consultant with specialism as a radiologist for cancer treatments. At the relevant time, he was working for NHS Trust hospitals in London and was on the teaching staff of Imperial College, London, while also ran a private practice for which clinical consultancy fees was received. The appellant retired from the NHS in 2020; he continues with his affiliation with Imperial College and his private practice.

8. The appellant is the only director and the majority shareholder GRI Research Laboratories Ltd, which was incorporated in Scotland in 1997. It is the appellant's case that all consultancy fees received from his private practice has been declared via GRI.

Enquiry July 2019 to February 2020

9. On 23 July 2019, HMRC opened an enquiry into the appellant's self-assessment tax return for the year ending 5 April 2018 ('**SATR 2018**'), and the key events leading to information notices being issued are summarised as follows.

(1) By letter dated 5 September 2019, the agent confirmed that the appellant did not receive any property income, provided a breakdown of investment income that consisted of bank account interest, notified an omission of bank interest credited to Santander account, and attached a revised personal tax computation.

(2) On 25 September 2019, HMRC requested details of the consultancy work completed for various organisations or entities other than Imperial College London; documents to evidence if consultancy fees have been declared through another tax entity; and bank statements for all accounts held by the appellant in the tax year 2017-18.

(3) The appellant did not respond to the 25 September 2019 letter, and on 15 November 2019, HMRC issued a Sch 36 Notice to request items as outlined in the September letter.

(4) On 5 February 2020, the appellant's agent (Mr Synnott) responded by advising that consultancy fees received by the appellant had been declared through GRI Research Laboratories Limited and provided a breakdown of the consultancy fees received. A copy of Company Tax return on Form CT600 for the tax year 2017-18 was attached.

(5) On 24 February 2020, HMRC completed an initial review of the information provided in the agent's response. The review highlighted two aspects for further enquiry: (a) the discrepancy between the reported turnover on the CT600 and the agent's breakdown of fees received collated from the appellant's personal bank statements provided for the tax year; (b) a reduction in shareholder funds on the one hand but without corresponding evidence of dividends or salaries having been paid.

(6) By letter dated 25 February 2020, HMRC wrote to the agent with questions in relation to the company accounts and requested company documents to explain the apparent discrepancies in turnover and shareholders' funds.

(7) On 27 February 2020, a second Sch 36 notice (as advised by letter of 25 February 2020) was issued for the remaining outstanding bank statements since only two of a total of 13 bank statements had been provided at the time.

Income declared on SATR 2018

10. The revised personal tax computation attached by the agent by letter dated 5 September 2019, the total income declared for 2017-18 is £163,243, and is derived from three sources:

- (1) Employment (with Imperial College) £140,358;
- (2) Partnership (Lindo Wing 2) of £21,333;
- (3) UK interest received of £1,552.

Analysis of bank statements

11. On 5 February 2020, the appellant's agent provided HMRC with bank statements and schedules analysing lodgements into two bank accounts held with Nationwide and Lloyds TSB.

(1) The Nationwide bank statements are addressed to Professor E Leen as the sole account holder at a Glasgow address, and contains lodgements from (a) 'Imperial College', (b) 'Lindo Wing 2', and (c) AXA PPP Healthcare.

(2) The TSB bank statements are addressed to Edward Leen as the sole account holder at a Buckinghamshire address, and contains lodgements from: (a) BUPA, (b) CBS Bene, (c) HCA, (d) names of individuals, and (e) Others.

(3) The agent stated that: 'Income on TSB statements and AXA income on Nationwide statements have been declared through a limited company – GRI Laboratories Ltd ...'.

12. The agent has separately confirmed that the two addresses shown on the Nationwide and TSB bank statements are the appellant's family/weekend home (in Glasgow) and his weekday home (in Buckinghamshire).

13. The lodgements into the Nationwide account are summarised as follows (p12 of bundle):

- (a) from Imperial College totalling £102,329.90 after PAYE applied;
- (b) from Lindo Wing 2 related to partnership income received of £19,375;
- (c) from AXA totalling £23,620.

14. The TSB lodgements total £670,351 in the 12 months to March 2018, but the allocation to the following categories of clients cross-cast to £667,851.04 (both figures on p26 of bundle); the difference of £2,499.96 would seem to have arisen in allocating sub-totals to categories.

- (a) From BUPA £168,603.50;
- (b) From CBS BENE £187,483.80;
- (c) From HCA Healthcare UK £78,020.55;
- (d) From Individuals £99,834.69;
- (e) From Others £133,908.50.

15. The range of monthly total of TSB lodgements is from £26,260 at the lowest in January 2018, to the highest of £89,743.40 in May 2017. Noting that the APE for GRI is 31 January, the monthly total for February 2018 of £53,313.31, and for March 2018 of £38,648.50 would be excluded in APE 31 January 2018 (a combined total of £91,961.81), while the monthly totals from February and March 2017 would have been included instead.

The company accounts and return

16. The figures on the profit and loss account for the two APEs 2017 and 2018 are as follows.

	APE 31.1.2018	APE 31.1.2017
Turnover	66,759	75,510
Less: Cost of sales	-24,500	-39,500
Gross Profit	42,259	36,010
Distribution costs	-439	-549
Administrative expenses	-31,038	-24,696
Profit before taxation	10,782	10,765
Corporation tax	-2,749	-2,836
Profit for the year	£8,033	£7,929

17. As for the balance sheet, the value of shareholders' funds consists of £120 called up capital, which remained unchanged from APE 2017 to APE 2018. The balance for retained earnings stood at £123,293 at APE 2018, a reduction from the balance of £165,140 at APE 2017. This resulted in a downward movement of the shareholders' funds of £41,847.

18. The company accounts provided post-hearing show the registered office address of the company to be in Lenzie, Glasgow, and its accountant as Lochside Business Services Ltd, of which Mr Synnott (the appellant's agent) is a director.

19. The corporation tax return for GRI on CT600 for the accounting period from 1 February 2017 to 31 January 2018 contains the following details:

(1) Turnover at £358,642 on CT600 differs hugely from the figure £66,759 in the company's accounts for APE 2018.

(2) Trading profits are stated to be at £14,470 on CT600.

(3) As there was a change in CT tax rate, the profits of £14,470 on CT600 were allocated £2,339 (i.e. 59 /365 of £14,470) to FY 2016 at 20% to arrive at a tax charge of £467.80, plus £12,131 (the balance) to FY 2017 at 19% to give a tax charge of £2,304.89. The overall tax liability on CT600 is stated at £2,772.69 (i.e. £467.80 plus £12,131).

20. No enquiry has been opened into the corporation tax return for GRI for APE 2018.

Hold of enquiry progress between April 2020 to August 2021

21. From 16 April 2020 to 11 August 2021, HMRC applied a hold to the enquiry due to the impact of the Covid-19 pandemic. On 12 August 2021, Officer Campbell was allocated to the case after an office reorganisation, and contacted the appellant's agent to resume the enquiry, and requested compliance with the outstanding information notice. There was no response. HMRC re-issued the Sch 36 Notice previously sent on 27 February 2020, and enclosed a copy of the 25 February 2020 letter. The date of compliance was updated to 18 September 2021.

Correspondence resumed: September to November 2021

22. The correspondence which led to the issue of the Notice under appeal is as follows:

(1) On 24 September 2021, the appellant's agent responded by saying that while they are 'always keen to co-operate', HMRC's information requests 'should be made only to the extent that they relate to checking the personal self-assessment tax return', with the comment that: 'It is our view that HMRC is not entitled to this information.'

(2) On 11 October 2021, Officer Campbell wrote to the agent and the appellant to advise that a check of the tax return is not restricted to the entries made on the return but also on what has not been included in the return. As to the items of information requested, they are 'reasonably required in order to get a full picture of [the appellant's] sources of income to ensure the return is complete and correct'. The letter made reference to *Bamel Patel v HMRC* [2017] UKFTT 323 (TC) ('*Bamel Patel*').

(3) No response was received for six weeks after the October 2021 letter from HMRC. On 25 November 2021, Officer Campbell issued a consolidated Sch 36 Notice (i.e. the Notice under appeal) and requested a full response by 17 January 2022.

23. By letter dated 26 November 2021, the agent wrote in response to HMRC's October 2021 letter, which would seem to have crossed with the issue of the Notice on 25 November 2021. Mr Synnott stated in the letter:

'[*Bamel Patel*] is a FTT case and is irrelevant to this enquiry. The information requested in that case is completely different to the information you are requesting in this case. We are not contesting the request in this enquiry based

on linkage ... We act for the company and Professor Leen and confirm that he did not receive any remuneration, dividends, or benefits from the company in the tax year ended 5th April 2018. It is our opinion that you have all information that you reasonably require.’

24. By email on 29 November 2021, Officer Campbell replied to the agent’s letter, stating:

‘The documents in relation to the company are relevant to this enquiry as your client has stated that the income received for consultancy work was paid to the company and included on the Corporation Tax return; we require sight of the requested documentation to confirm this.

In addition to this, your client has significant financial control of the company and we need to be satisfied that all monies received from the company have been correctly reported on your client’s Self-Assessment Tax Return.’

The Notice under appeal

25. The schedule of information contained in the Notice under appeal states as follows:

‘This notice and schedule applies to all documents in your possession or power, other than documents or information that fall within paragraph 19 of Schedule 36 Finance Act 2008 or is privileged.

Information that we need

[...]

You advised that all the credits made to the TSB account plus the AXA income credited to the Nationwide account were reported through GRI Research Laboratories Ltd, the sum of which – according to your figures - was £693,607 for 2017-18.

Having reviewed the accounts of that company to the 31 January 2018 I can see that the reported turnover for the company was £358,642. Please explain the reason for the apparent discrepancy.

Those accounts show the liabilities and shareholders’ funds to (both) be £123,293. Please advise:

1. How the amount shown as shareholder’s funds came about.
2. The reason for the reduction in this amount from £165,260 at 31 January 2017 to £123,293 at 31 January 2018 (it would appear that no dividends/salary are being paid out from this company).
3. How much of those shareholders’ funds related to Mr Leen?
4. Have any dividends or salaries been paid from this company? If so, please provide details.
5. Will you please provide an analysis of the director's loan account for the period to 31 January 2018 to include the opening and closing balances, the date, amount and description of each individual transaction posted to that account.’

26. The appellant appealed to HMRC against the Notice, and was offered a review. The review conclusion decision dated 12 May 2022 upheld the Notice, wherein the review officer made reference to *Perring v HMRC* [2021] UKFTT 110 (*‘Perring’*), as concerns the burden of proof for establishing that documents are ‘reasonably required’ for a taxpayer notice issued under para 1 of Sch 36 lies with HMRC. The review officer’s conclusion is stated as follows:

‘I consider that there are sufficient grounds to show that HMRC had reason to suspect that the tax return you submitted for the tax year 2017-18 may be

inaccurate when considering all the information known to them at the time the notice was issued, and that their suspicion is still valid.’

APPELLANT’S GROUNDS OF APPEAL

27. In the Notice of Appeal, the various grounds stated are that:

- (1) *Bamel Patel* ‘is far too dissimilar to have any relevance’.
- (2) The review decision was ‘flawed in that there is only one issue that is central to this enquiry’ and “‘Reasonably Required” is doing a mighty amount of heavy lifting’. It is also stated that *Perring* ‘has no relevance to this enquiry’.
- (3) The information requested is a full enquiry into GRI Research Laboratories Ltd which ‘HMRC are not entitled to’.

‘The only one issue reasonably required to ‘Check the tax return’ that is an explanation of the turnover figure. We fully recognise this and have stated we are prepared to provide this. HMRC have completely ignored this, and prefer to proceed with a full enquiry into GRI Research Laboratories Ltd.’

28. The submissions made by Mr Synnott to the Tribunal can be summarised as follows:

- (1) That the enquiry was opened into the appellant’s personal tax return; and all the bank statements have already been provided.
- (2) The items of information requested on the Notice relate to the company GRI.
- (3) An enquiry into the appellant’s personal tax position does not extend to permit HMRC to request records that belong to the company.

29. As we understand it, the appellant’s main contention that the company GRI is a separate entity from the appellant, and GRI’s records cannot therefore be reasonably required for checking the appellant’s personal tax position.

HMRC’S CASE

30. In response to the appellant’s main contention, the respondents’ case is that there is a close connection between the appellant and the company GRI, and the records of GRI are relevant to checking the appellant’s personal tax position. The respondents’ submissions are:

- (1) Condition A under para 21(4) of Sch 36 has been met as a notice of enquiry was given to the appellant on 23 July 2019.
- (2) The appellant is a director of GRI, so the information required is in the appellant’s possession or power to provide.
- (3) The appellant has stated that the income on his TSB account and the AXA income credited to his Nationwide account have been reported in the company’s accounts rather than on his SATR for 2017-18.
- (4) The income credited to the two bank accounts of £693,607, while the CT600 shows turnover of £358,642, and is a discrepancy that has no explanation.
- (5) There is the reduction in shareholders’ funds but no evidence that any dividends have been declared.
- (6) The appellant is a director of GRI, and the requested analysis of the director’s loan account is reasonable required to establish the appellant’s tax position.
- (7) The information relating to GRI is therefore reasonably required to check the appellant’s obligations under the SA regulations to make a complete and correct return.

DISCUSSION

Purpose of the statutory scheme

31. The central issue for determination in this appeal is whether the items on the Notice are ‘reasonably required’ for checking the taxpayer’s tax position within the framework of statutory powers as provided Schedule 36 FA 2008. The purpose of the statutory scheme is summarised by the Court of Appeal in *Derrin Brothers Properties v HMRC* [2016] EWCA Civ 15 (‘*Derrin*’) at [68]:

‘The purpose of the statutory scheme is to assist HMRC at the investigatory stage to obtain documents and information without providing an opportunity for those involved in potentially fraudulent or otherwise unlawful arrangements to delay or frustrate the investigation by lengthy or complex adversarial proceedings or otherwise.’

32. Within the context of a section 9A enquiry, the purpose of the statutory scheme under Sch 36 FA 2008 is to give HMRC officer the power to gather information at the investigatory stage before reaching a conclusion to close an enquiry. In doing so, HMRC are performing a public duty to assess a taxpayer to the correct amount of tax to the best of their judgment in the light of available information. As Henderson J (as he was then) stated at [115] of the High Court decision in *Tower MCashback LLP1 v HMRC* [2008] EWHC 2387 (Ch):

‘There is a venerable principle of tax law to the general effect that there is a public interest in taxpayers paying the correct amount of tax, and it is one of the duties of the Commissioners in exercise of their statutory functions to have regard to that public interest.’

33. A conclusion stated in a closure notice may have legal significance beyond the year of enquiry 2017-18, if HMRC are to raise discovery assessments based on the closure notice conclusion on the presumption of continuity. If a closure notice conclusion is stated prematurely, it can lead to unintended consequences as highlighted by the Supreme Court in *Tower MCashback LLP 1 and another v HMRC* [2011] UKSC 19.

34. Unless and until an HMRC officer has gathered sufficient information to form a view of the matter in issue by way of a closure notice under section 28A TMA, a section 9A enquiry remains open. We consider the central issue in this appeal against the statutory purpose of the Schedule 36 scheme, and against the procedural significance of a closure notice conclusion which needs to be founded on sufficient evidence gathered from information requests.

Burden of proof

35. In *Joshy Matthew v HMRC* [2015] UKFTT 0139 (TC)(‘*Joshy Matthew*’), the First-tier Tribunal (Judge Redston and Ms Myerscough) considered whether the burden of the ‘reasonably required’ test is on HMRC with a review of relevant case law. It concluded at [82] that the weight of authority is that the burden rests on the appellant that the information or documents sought are not reasonably required. It states further at [84]:

‘This analysis is also consistent with the objective of Sch 36 taken as a whole’, which is “to ensure that the information which will ensure that the correct amount of tax can be determined”, see *HMRC v Tager* [2015] UKUT 0040 (TCC) at [16] per Judge Bishopp.’

36. In relation to the burden of proof, the Court of Appeal stated in *PML Accounting Ltd, R(oao) v HMRC* [2018] EWCA Civ 2231 (‘*PML*’) as follows:

‘[97] ... HMRC may therefore be at a very early state of their investigation or enquiry when the notice is given, and the purpose of the notice is to obtain potentially relevant information from the taxpayer which may assist HMRC with the conduct of the investigation or enquiry.’

[98] That is the context in which the right of appeal conferred by paragraph 29(1) has to be considered. The appeal may challenge “the notice or any requirement in the notice”, other than a requirement to provide any information, or produce any document, that forms part of the taxpayer’s statutory records ... On such an appeal, the burden lies upon the taxpayer, in the usual way, to establish his grounds of appeal; and in disposing of the appeal, the FTT has the powers set out in paragraph 32(3).

37. *PML* post-dates *Joshy Matthew*, and affirms the conclusion reached in *Joshy Matthew* after review of case law that the burden rests on the appellant on an appeal under paragraph 29(1) of Sch 36 to establish that the information and documents sought are not reasonably required. The tribunal in *Joshy Matthew* nevertheless acknowledged that ‘it remains arguable that the burden is on HMRC’ (at [85]) and determined the appeal ‘on the working assumption’ that HMRC have the burden. We adopt the same approach, noting that HMRC in the present case have accepted that the burden lies with them to prove the information and documents sought to be reasonably required to check the appellant’s tax position. Thereafter, we consider that the onus shifts to the appellant, to demonstrate that the information and documents sought are *not* reasonably required.

Whether HMRC have met the burden

Statutory condition under para 21 Sch 36

38. In the present case, the Notice was issued following an enquiry into a return submitted under section 8 of TMA. Paragraph 21 of Sch 36 provides that where a return has been submitted, a taxpayer notice may not be given unless one of the four statutory conditions (A to D) under para 21 Sch 36 is met. Mr Ellis’ submissions for HMRC expressly address the matter as whether para 21 statutory conditions have been met.

39. From Mr Ellis’ submissions and the review conclusion decision by the Review Officer, the Tribunal understands that HMRC rely on Condition B (para 21(6)) as having been met, in that an HMRC officer ‘has reason to suspect’ that ‘an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed’.

Findings of fact relevant to ‘reason to suspect’ for Condition B

40. We agree with the FTT in *Perring* that for an Officer to have reasonable grounds to suspect that an assessment has become deficient, it requires ‘not only that the Officer to have formed that view but in addition that it must also be objectively reasonable to hold that view’ and that some evidence must exist to indicate a deficiency in relation to the tax year for which the Notice has been issued: (at [19](1) of *Perring*).

41. The Tribunal makes the following findings of fact to determine if Condition B has been met for HMRC to issue the Notice.

- (1) From the agent’s schedules giving the breakdown of consultancy fees, a total of £670,351 was credited to the TSB account, and a total of £23,620 from AXA was credited to the Nationwide account in the 12 months from April 2017 to March 2018.
- (2) The appellant is the sole account holder of both TSB and Nationwide accounts.
- (3) The combined total of consultancy fees credited to the appellant’s bank accounts is therefore £693,971 in the tax year 2017-18.
- (4) The appellant’s SATR for 2017-18 declares income from Imperial College (under PAYE), from partnership (Lindo Wing 2) and interest received.

(5) None of the £693,971 credited to the appellant's two bank accounts have therefore been declared on his SATR 2018. It is the appellant's case that all consultancy fees have been declared via GRI.

(6) The turnover of GRI as stated in the company accounts for the APE 31 January 2018 prepared by the same agent acting for the appellant is £66,759.

(7) The bank lodgements for consultancy fees stand at £693,971, while GRI's turnover for APE 2018 stands at £66,759, which is 9.62% of the bank lodgements total.

42. Even if adjustments are to be made to the 12-month period turnover for APE January 2018 by substituting the combined total of £91,961.81 (see §15) for February and March 2018 per bank lodgements, with the equivalents for February and March 2017 bank lodgements, there would still be a significant shortfall, given that GRI's annual turnover for APE 2017 was only at £75,510, two months of the annual turnover for February and March 2017 would approximate £12,585.

43. The declared turnover of GRI for APE 2017 stands at £75,510 is at a similar level to the annual turnover of £66,759 for APE 2018. On the face of it, and to an objective observer, only 9.6% of the consultancy fees credited to the appellant's Nationwide and TSB accounts would have been declared via GRI.

44. We conclude that Condition B under para 21(6) is met, and HMRC have reason to suspect that there was an amount that ought to have been assessed to tax in relation to the consultancy fees paid into the appellant's bank accounts which did not seem to have been assessed to corporation tax by being included as the turnover of GRI for the relevant chargeable period.

The discrepancies between CT600 and company accounts

45. We are troubled by the fact that the appellant's agent provided a CT600 which contains significant discrepancies from the equivalent figures stated in the company accounts for GRI.

(1) The turnover figure on CT600 is £358,642, when the turnover figure per company accounts for APE2018 is at £66,759 to appear on CT600.

(2) The trading profits on CT 600 is £14,470, when the operating profit per company accounts for APE 2018 is at £10,782.

(3) The only figure that matches closely is the corporation tax payable, which is stated as £2,772.69 on CT600 and £2,749 on the company accounts.

46. The CT600 was provided to HMRC in the early course of the enquiry, and indeed the figure £358,642 has been adopted by the previous officer as GRI's declared turnover to quantify the discrepancy only to the extent of £335,329 (i.e. £693,971 less £358,642).

47. The turnover figure on CT600 is then carried forward by Officer Campbell on the face of the Notice, while the discrepancy in relation to the turnover figure on the company accounts for turnover at £66,759 has not been addressed.

48. The discrepancy at £627,212 (i.e. £693,971 less £66,759 per company accounts) would appear to be significantly bigger than that stated on the Notice. On the face of it, the turnover stated on CT600 of £358,642 is 51.6% of the total consultancy fees is misleading, given that in the company accounts only £66,759 (9.6% of total fees) has been declared as turnover.

49. While it is not suggested that the figure of £358,642 on CT600 was provided at the outset of the enquiry to mislead HMRC with a headline figure as having been declared via GRI, an explanation would be reasonably required as to why £358,642 was provided to HMRC by way of CT600, when the turnover figure stated on the company accounts is £66,759.

Whether ‘reasonably required’

50. There is no statutory definition for the meaning of ‘reasonably required’. In *Kotton v FTT & HMRC* [2019] EWHC 1327 (Admin) (‘*Kotton*’), the High Court dismissed the taxpayer’s judicial review claim against a third-party information notice issued by HMRC, and at [60] gives guidance to the test as to whether documents are ‘reasonably required’:

‘... the question for the FTT in relation to the information and documents sought by a third party notice is also expressly limited: the FTT must be satisfied that in all the circumstances, the officer giving the notice is justified in concluding that the information or documents are reasonably required for checking the tax position of the taxpayer. Again, that does not require any examination of the nature and extent of the underlying tax investigation, but rather a focus on whether there is a rational connection between the information and documents sought and the underlying investigation.’

51. The focus for the Tribunal in determining whether the items on the Notice are ‘reasonably required’ is by asking whether there is a ‘rational connection’ between the information and documents sought and the underlying investigation.

52. We are satisfied that there are sufficient grounds to show that HMRC had reason to suspect that the tax return you submitted for the tax year 2017-18 may be inaccurate when considering all the information known to them at the time the Notice was issued. More specifically, there is evidence to suggest that a considerable proportion of consultancy fees received by the appellant has not been declared via GRI as asserted by the appellant.

53. There is a *prima facie* case that in the tax year 2017-18, the appellant is liable for the difference between what was declared as turnover on GRI’s company accounts (circa £67,000) and the total bank lodgements which are characterised by the appellant’s agents as consultancy fees of circa £694,000, as undeclared income that should have been included in the appellant’s SATR 2018.

54. It is not HMRC’s case that the figures reported on the appellant’s SATR2018 were wrong in fact, such as employment income received under PAYE. It is HMRC’s case that they have ‘reason to suspect’ under-declaration of sources of income. From the obtainable facts, it seems that the central issue in this enquiry is the extent of *omission* in the SATR 2018.

55. In relation to possible omission(s), if there had been substantial under-declaration of consultancy fees over the years, there could also have been accumulated investment income undeclared. At the start of the enquiry, the appellant’s agent addressed the entry on the appellant’s SATR 2018 in relation to investment income, but only to the extent of bank deposit interest received.

56. From the appellant’s bank statements with Nationwide and TSB, there would appear to be significant sums of money to investment houses, such as A J Bell Manchester and Charles-Stanley London, which suggest that there could be other sources of investment income omitted in the appellant’s SATR 2018. The Notice is focused on the consultancy fees aspect of the enquiry, and it is a matter for HMRC to decide if any further information request is required as respects investment income arising elsewhere.

57. We are satisfied therefore that there is a ‘rational connection’ between the appellant’s personal tax position and the accounting records of the company GRI for the items on the Notice to be ‘reasonably required’.

Whether the appellant has met burden

58. The appellant’s main contention is to say that the SATR2018 in relation to which the enquiry was opened is correct and complete, and all consultancy fees have been declared via

GRI. However, on the face of it, not even 50% of the consultancy fees were declared as HMRC were led to believe by virtue of the CT600 turnover figure, let alone all consultancy fees as asserted for the appellant.

59. There is a prima facie case that only 9.6% of the consultancy fees paid into the appellant's personal bank accounts in the tax year 2017-18 had been declared via GRI, and over 90% of fees would appear to be neither in the SATR 2018, nor in the company's turnover. In ascertaining GRI's turnover position, it appears to us that HMRC are engaging fully with the appellant's main explanation that consultancy fees, which evidently were paid into the appellant's personal bank accounts, were declared via the company GRI.

60. As a matter of fact, the consultancy fees were paid into the appellant's *personal* bank accounts, and can be properly assessed to be income directly receivable by the appellant. It is for the appellant to make good the assertion that all consultancy fees were declared via GRI. To the extent that the consultancy fees have not been included as GRI's turnover, then it is fully assessable on the appellant personally.

61. Secondly, the appellant contends that the enquiry is opened into the personal tax return of Dr Leen, and not into the company GRI. It is contended therefore that it is not legitimate for HMRC to ask questions in relation to GRI's records when the enquiry was opened into the personal tax return of Dr Leen. The Tribunal accepts HMRC have not opened an enquiry into GRI's return for 2017-18. However, the company GRI cannot be deployed as a smokescreen to deflect HMRC's focus on enquiring into the appellant's personal tax affairs.

62. To all intents and purposes, the company GRI appears to be the appellant's personal service company. All information and documents requested in relation to GRI are therefore in the appellant's power of possession. The fact that the appellant is the director of GRI, and the majority shareholder may have implications on the appellant's personal tax position. The items on the Notice are relevant to the appellant's personal tax position, even if the items are concerned with his role as a director-shareholder of GRI.

63. The appellant has not met the burden that the information and documents sought on the Notice are not reasonably required. The appellant's case that all consultancy fees have been declared via the company GRI is not supported by the information provided so far to HMRC. In requesting the information on the Notice, it offers the appellant the opportunity to establish the veracity of his position that all consultancy fees were declared via the company.

64. For the reasons as set out above, we dismiss the appeal. We confirm the Notice in full, save for the amendments as specified in the following directions. Mr Synnott made some valid comments that certain wording of the Notice makes no sense to him, and we have taken into account these comments in making the amendments.

No further right of appeal

65. Paragraph 32(5) of Sch 36 FA2008 provides that the decision by this Tribunal on an appeal under paragraph 29 of Schedule 36 is final. The statutory wording of paragraph 32(5) is clear of the finality of the appeal process:

‘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.’

66. Longmore LJ at the Court of Appeal remarked specifically on the ‘unusual provision’ that there should be no further right of appeal against a Sch 36 notice at [100] of *PML*:

‘This means that the normal rights of appeal from a decision of the FTT to the Upper Tribunal, and from the Upper Tribunal to this court, are excluded. The inference which I draw from this unusual provision is that Parliament did not

wish the collection of information by HMRC from taxpayers to be unduly delayed. Adequate protection for the taxpayer, at this early stage, is provided either by the prior approval of the tribunal to the giving of the notice, or (if such approval is not sought by HMRC under paragraph 3) by the single right of appeal under paragraph 29.’

DIRECTIONS TO AMEND THE NOTICE AND FOR COMPLIANCE

67. The Tribunal hereby directs:

(1) The Notice pursuant to Schedule 36 FA 2008 that has been served on the appellant be amended to reflect the changes in square brackets as follows:

You advised that all the credits made to the TSB account plus the AXA income credited to the Nationwide account were reported through GRI Research Laboratories Ltd, the sum of which – according to your figures - was £693,**[971]** for 2017-18.

Having reviewed the accounts of that company to the 31 January 2018 I can see that the reported turnover for the company **[on CT600]** was £358,642, **[whereas the turnover on the company’s accounts for APE 31 January 2018 was £66,759]**. Please explain the reason for the apparent discrep**[ies]**.

Those accounts show the **[current]** liabilities **[at 6,419]** and shareholders’ funds to ~~(both)~~¹ be £123,293. Please advise:

1. How **[the balance of liabilities at £6,419]** shown, **[which have reduced]** as shareholder’s funds, **[was arrived at]**.
2. The reason for the reduction in **[the balance of shareholders’ funds]** from £165,260 at 31 January 2017 to £123,293 at 31 January 2018 (it would appear that no dividends/salary are being paid out from this company).
3. How much of those shareholders’ funds related to Mr Leen?
4. Have any dividends or salaries been paid from this company? If so, please provide details.
5. Will you please provide an analysis of the director's loan account for the period to 31 January 2018 to include the opening and closing balances, the date, amount and description of each individual transaction posted to that account.’

(2) Items 6 and 7² stated as follows are to be added to the Notice to provide clarity to the movement in the shareholders’ funds.

‘6. The consultancy fees income would appear to have been paid into Dr Leen’s personal bank accounts. Please provide evidence of the income transfer from Dr Leen’s personal accounts to fund the operating account of GRI Research Laboratories Ltd in APE 31 January 2018?’

7. The movement in the shareholders’ funds would appear to be largely related to the reduction in the ‘Cash at bank’ balance from £176,387 in APE 2017 to

¹ The sentence in the Notice pertaining to the balance sheet figures: ‘Those accounts show the liabilities and shareholders’ funds to (both) be £123,293’ does not make sense. The liabilities (i.e. ‘amounts falling due within one year’) stand at £6,419 in the accounts, which is *not* identical to the balance for ‘shareholders’ funds’. The correct description should be ‘*the total assets less liabilities*’ and the shareholders’ funds to be (both) £123,293. It is a tautology since a balance sheet is always a summary of: Assets less liabilities = Shareholders’ funds.

² Given that the balance of shareholders’ funds is invariably arrived at as the balancing figure in a set of accounts, it will inform the question as to how the shareholders’ funds balance is arrived at. The substantive figures that inform the movement in the balance of shareholders’ funds are derived from looking at any movements in the balances of total assets and liabilities; hence the additional information under items 6 & 7 as regards assets.

£126,244. Please provide a reconciliation to explain the reduction in the cash balances from APE 2017 to APE 2018.’

(3) The appellant must comply with the requirements in the Notice, as amended, within 30 days of the release of this decision.

CONCLUSION

68. The appeal is dismissed.

69. The items required in the Notice in relation to the tax year ended 5 April 2018 are confirmed in full, with amendments and time limit for compliance as per directions included in this decision notice.

70. This document contains full findings of fact and reasons for the decision. Paragraph 32(5) of Schedule 36 FA2008 provides that the decision by this Tribunal on an appeal under paragraph 29 of Schedule 36 is final. There is no right of appeal.

**DR HEIDI POON
TRIBUNAL JUDGE**

RELEASE DATE: 05th MAY 2023