



TC08298

Procedure – Schedule 36 Finance Act 2008 – Information Notice – whether information reasonably required – yes – power or possession – yes – notice and requirements - confirmed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01044

BETWEEN

WILLIAM LAWSON

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE ANNE SCOTT
MEMBER: LESLIE HOWARD**

The hearing took place on 21 July 2021 via the Tribunal video platform.

We heard the Appellant in person

Paul Shea, Litigator of HM Revenue and Customs’ Solicitors Office for the Respondents

DECISION

INTRODUCTION

1. This is an appeal by Mr Lawson against an information notice (the “Notice”) dated 30 August 2019 issued under paragraph 1 Schedule 36 Finance Act 2008 (“Schedule 36”).
2. The burden lies with HMRC to satisfy the Tribunal that the Notice satisfies the requirements of Schedule 36.
3. To the extent that it is asserted by Mr Lawson that documents are not within his possession or power, it is for Mr Lawson to satisfy the Tribunal, on the balance of probabilities, that they are not.

Evidence

4. The Tribunal had a bundle of 294 pages which included a witness statement of Officer Middlebrooke and the appellant’s witness statement. We heard evidence from both.

Procedural Background

5. On 27 January 2019, Mr Lawson submitted his tax return for the year ended 5 April 2018.
6. On 21 March 2019, Officer Middlebrooke opened an enquiry into that tax return enclosing a schedule setting out the documents and information that was required. Correspondence ensued.
7. On 4 July 2019, Officer Middlebrooke wrote to the appellant informally requesting information.
8. On 30 August 2019, the officer wrote to Mr Lawson explaining that HMRC required more information, issued the Notice and the Schedule detailing the requirements of the Notice. We annex at Appendix 1 a copy of that Schedule.
9. On 18 September 2019, the appellant appealed the entirety of the Notice.
10. On 10 October 2019, Officer Middlebrooke wrote to Mr Lawson setting out HMRC’s view of the matter and offered a statutory review.
11. On 30 October 2019, Mr Lawson requested that review and on 30 January 2020, HMRC issued the conclusion of the statutory review upholding the requirements of the Notice. (We find that the use of the word “company” at page 6 of their letter was a clerical error and of no significance.)
12. On 28 February 2020, Mr Lawson notified his appeal to the Tribunal.

The Law

13. Paragraph 32 of Schedule 36 provides that:-
 - “(3) On an appeal that is notified to the tribunal, the tribunal may –
 - (a) confirm the information notice or a requirement in the information notice,
 - (b) vary the information notice or such a requirement, or
 - (c) set aside the information notice or such a requirement”.
14. Paragraph 32(5) of Schedule 36 provides that such a decision is final and there is no further right of appeal.

15. Paragraph 1 of Schedule 36 reads:-

(1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)

(a) to provide information, or

(b) to produce a document,

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

16. Paragraph 21 of Schedule 36 provides that, for a taxpayer notice to be valid, one or more of conditions A to D must be met. Paragraph 21(6), for Condition B, is that an officer has reason to believe that an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed, and paragraph 21(8), for Condition D, is that the notice is given for the purpose of obtaining any information or document that is required for the purpose of checking the person’s Tax return.

17. Paragraph 58 of Schedule 36 defines checking as “includes carrying out an investigation or enquiry of any kind”.

18. Paragraph 64 of Schedule 36 defines “tax position” as follows:-

(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 ...

(4) References in this Schedule to a person’s tax position are to the person’s tax position at any time or in relation to any period, unless otherwise stated.

Facts

19. Officer Middlebrooke received information from colleagues in HMRC’s risking service which evidenced significant payments made by a number of UK resident companies to UK residents, one of whom was Mr Lawson. He checked Mr Lawson’s self-assessment tax return for 2017/18 and there was no record of any such payments including in the white space notes. For that reason he opened the enquiry.

20. Mr Lawson has confirmed to HMRC that he received £55,834 during 2017/18 and stated that the payments were capital and received from an “overseas discretionary trust”.

21. On 14 August 2019, Mr Lawson wrote to HMRC stating that he could not recall the exact name of the trust but “The Trustees are Belize Offshore Services Limited and the Trust is administered in Belize”. He confirmed again that it was a discretionary trust and that the distributions were of capital. He stated that he did not hold any documents and that any information was received verbally. He stated that he believed that the amount received was not income because it was not as a result of his employment, employment-related benefits, relevant foreign income, income from a trust, or any of the other categories included in the tax return.

22. Correspondence ensued including the issue of the Notice. On 22 September 2020, a Mr Jenkins of Belize Offshore Services Limited wrote to Mr Lawson in relation to “The Second

Oiseau Trust” stating “I can confirm that all payments made to you were done on a fully discretionary basis as capital distributions for investment purposes. Furthermore, I can also confirm that we have no record of you being a Settlor or Beneficiary of any Trust in our records or that you have adhered or made any contributions to any Trust under our management”. Mr Jenkins went on to state that no further details or information would be provided.

23. HMRC held bank data, which was exhibited to the Tribunal, showing payments to the Second Oiseau Sub Trust between 2010 and 2013.

Discussion

24. As we point out at paragraph 16 above, one or more of conditions A to D of paragraph 21 of Schedule 36 must be met. In the review conclusion letter, HMRC relied on condition D. At the hearing Mr Shea relied on condition B as did the Statement of Case. We find that that condition has been met.

25. Mr Shea also confirmed to the Tribunal that requirements in 1d and 2c of the Notice have been satisfied by Mr Lawson so that information is no longer required.

26. Officer Middlebrooke’s evidence was very clear and concise.

27. As can be seen paragraphs 1 to 6 of the information requested in the Notice simply require Mr Lawson to answer questions. The question for the Tribunal is whether or not those questions are reasonable. Looked at objectively all that Officer Middlebrooke wants to know, as he said, is to establish the facts and identify the source of the substantial payments in 2017/18. Furthermore, he obviously wishes to know the facts in relation to earlier years since Mr Lawson, who was a straightforward witness, confirmed that he had known about the Trust for some five years.

28. HMRC relied on Judge Mosedale in *Price v HMRC*¹ where she said at paragraph 10:-

“... HMRC is entitled to know the full facts related to a person’s tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody’s time if HMRC are forced to make assessments without the knowledge of the full facts. The statutory scheme is that HMRC are entitled to full disclosure of the relevant facts: this is why they have a right to issue (and seek the issue of) information notices seeking documents and information reasonably required for the purpose of checking a tax return ...”.

29. HMRC are correct in saying that they need to verify that the payments in 2017/18, let alone in earlier years, are what Mr Lawson says that they are. The enquiry process, itself, is neutral and represents an opportunity for taxpayers to provide information and documents to confirm that their tax return is correct.

30. In the event that HMRC raised assessments in respect of the payments in 2017/18, then, if Mr Lawson wished to appeal those assessments, he would have to appeal to the Tribunal and the onus of proof would be on him to prove that the payments were capital and not income etc. In order to do that he would have to produce answers to the questions set out in paragraphs 1 to 6 in the Notice.

¹ 2011 UKFTT 624 (TC)

31. In summary, we find it that it is entirely reasonable for HMRC to seek explanations and evidence as to the nature of Mr Lawson's relationship with the Trust and to establish the source of the original funds from which he has now benefited.

32. On the basis that Mr Lawson has confirmed that he has known about the Trust for five years we find that it is entirely reasonable for HMRC to ask the question posed at paragraph 8 of the Notice as to amounts received in earlier years. It is restricted to only the three years to 5 April 2017 and to the periods after 6 April 2018.

33. Lastly, paragraph 7 of the Notice deals with bank statements. Officer Middlebrooke simply wants statements for the period from 6 April 2017 to 5 April 2018, being the year of inquiry, in order to verify that the known payments amounting to £55,834 are the only payments. That is reasonable and Mr Lawson clearly has both possession of those and/or power to obtain those.

Conclusion

34. We find that the Notice is intelligible, the information is reasonably required to check Mr Lawson's tax position, and Officer Middlebrooke had, and has, good reason to suspect that self-assessments by Mr Lawson may be or have become insufficient. HMRC reasonably requires further information and such documents as it may be possible to produce in order to check the tax return(s).

Decision

35. For all these reasons the grounds of appeal are dismissed and we confirm both the Notice and the requirements in the Notice.

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

**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 11 OCTOBER 2021

APPENDIX

Schedule

Customer name: Mr W Lawson

Our reference number: C-A/S0663/8347256605/CFS-1659973/BMM

Documents or information that we need

In this context 'document' means anything in which information of any description is recorded. This includes any records held on computer, magnetic tape, optical disk (CD-ROM/DVD), hard disk, memory stick, flash drive, floppydisk or other recording media.

Payments from Trust

1. You have stated that you are unable to recall the exact name or address of the trust who paid you £55834 in 2017/2018. In connection with this;
 - a. When approximately did you first hear about the trust?
 - b. Who first told you about the existence of the trust?
 - c. Who else have you discussed any issues relating to the trust with?
 - d. I consider that it is in your power to request details of the name and address of this trust from those persons listed at 1b and 1c above. Please now request & submit the required details. If your request is denied, please forward evidence of this together with the reasons given.
2. You have stated that you did not retain the correspondence from the trust that first made you aware that you were a beneficiary. In connection with this;
 - a. Who was the correspondence from & in what format, i.e. e-mail, letter etc.?
 - b. Please provide an overview of what the correspondence said
 - c. I consider that it is in your power to request a copy of this correspondence. Please now request & submit the required details. If your request is denied, please forward evidence of this together with the reasons given.
3. Who verbally advised you that the trust was discretionary?
4. Who verbally advised you that the sums were capital distributions from an offshore trust?
5. Does any other member of your family have any involvement or awareness of this trust, for example in terms of where the original source of money settled in to the trust was derived, why the various UK companies were used as intermediaries, why you were chosen as a beneficiary, who other beneficiaries are etc.? If yes, please provide a narrative to convey such involvement/awareness.
6. You have stated that Belize Offshore Services Ltd are the trustees and settlor. In connection with this;
 - a. Who advised you that the trustees are the settlor?
 - b. When this person advised you of this, i.e. that somebody (i.e. the 'Belize Offshore Trust') was going to put money in to a trust, then act as the trustees themselves, and that you were a beneficiary of the trust, did you ask them;
 - i. Who the money came from originally before it reached what appears to be an intermediary in the process, i.e. the Belize Trust. If yes, please provide details. If no, please explain why you chose not to ask that question.
 - ii. Why you had been chosen to become a beneficiary of the trust? If yes, please provide

details, if no please explain why you chose not to ask this question.

7. You have declined to supply the bank statements requested on the grounds that the sums were capital contributions from an offshore trust. To date, you have supplied no documentary evidence to support that claim - I therefore think it a reasonable starting point at this stage of the enquiry to view the bank statements of the account to which the payments were made to check whether all such payments have been declared. Please now forward statements for the period 6 April 2017 to 5 April 2018.

8. You have also declined to supply information with regards to amounts received from offshore trusts in the 3 years to 5 April 2017. This information is entirely relevant & reasonably required to enable me to check your tax position. Please now supply this information, to include details of any amounts received since 6 April 2018 until the present date.