[2016] UKFTT 316 (TC)

TC05085

Appeal number: TC/2014/06142

INCOME TAX – application for the tribunal to direct HMRC to issue a closure notice under s 28A Taxes Management Act 1970 – appeal against information notice issued under schedule 36 of the Finance Act 2008 and related penalties - application refused, information notice varied and appeal otherwise dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR SONY CHERIAN **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE HARRIET MORGAN

Sitting in public at Fox Court, Brooke Street, London on 9 December 2015

Mr James Onalaja as Counsel for the Appellant

Ms Harry Jones, an officer of the Respondents, for the Respondents ("HMRC")

DECISION

1. The appellant:

(1) applied on 12 November 2104 for the tribunal to make a direction for HMRC to close their enquiry into his self assessment tax return for the tax year 2012/13 (under s 28A(4) of the Taxes Management Act 1970 ("**TMA**"));

(2) appealed against an information notice issued by HMRC on 4 September 2014 under para 1 of schedule 36 of the Finance Act 2008 ("**schedule 36**")(the "**information notice**"); and

(3) appealed against a fixed penalty of £300 and daily penalties of £600 HMRC sought to impose under paras 39 and 40 of schedule 36 in notices issued on 7 October 2014 and 7 November 2014 for failure to comply with the information notice.

2. I note that the tribunal did not proceed to hear the substantive issues at a previous hearing on 8 September 2105 in part as the appellant was not able to attend and the tribunal accepted his submission that he needed to be present to give evidence. The appellant did not attend this hearing and no prior notification or reason for his non attendance was provided to the tribunal. Mr Onalaja confirmed that the appellant expected the hearing to go ahead in his absence and that he had not provided Mr Onalaja with any explanation for his non attendance. I decided that, in such circumstances, having regard to the rules governing the tribunal including the overriding objective of dealing with matters justly and fairly, there was no reason not to proceed.

Facts

3. In making findings of fact I have had regard to the bundles produced to the tribunal, which includes the correspondence between the parties, the witness statement and oral evidence of Mr Stephen Anderson, the HMRC officer currently dealing with this matter, and the witness statement of the appellant. I would note that I have also taken into account a witness statement of Mr Cox, an officer of HMRC who was previously involved in this matter before Mr Anderson took over. This is on the basis that Mr Anderson confirmed in his evidence that the facts set out in that statement are true. As regards the appellant, I have allowed his witness statement to be produced (and note that HMRC did not object) but find that little reliance can be placed on factual assertions made by the appellant in that statement given he chose not to attend and could not be cross examined.

4. Mr Kevin Straughair, a member of the HMRC Specialist Investigation ("**SI**") team in Newcastle Upon Tyne, notified the appellant, in a letter dated 25 July 2014, that he would be enquiring into his tax return for the tax year 2012/13 under the provisions of s 9A TMA. Mr Straughair noted he would be enquiring into the whole return and requested the provision of specified documents and information by 26 August 2014 (see 17 for further details of the items requested).

5. The enquiries related to the appellant's employment income and benefits in the tax year 2012/13. In that year the appellant was employed by Venture Pharmacies Limited until 30 November 2012 and took on two new posts, as the sole director of Eurobay Homecare Limited ("**EHL**") from 13 June 2012 and, as one of two directors of Eurobay Homecare (Holdings) Limited ("**Holdings**").

6. In his tax return for 2012/13 the appellant declared employment income of £23,333 from Venture Pharmacies Limited, employment income of £11,729 from EHL and taxable benefits in the form of a car provided by each of EHL and Holdings. EHL had provided forms P60 in this regard. The appellant had in the previous tax year earned a salary of £35,464 from his role as an accountant with Venture Pharmacies Limited.

7. Holdings is a company registered in the BVI, which wholly owns the shares in EHL. It has one other director, Bartsec Limited, a company registered in Guernsey. HMRC have not been able to identify the ultimate ownership of Holdings. EHL had substantial turnover in the period in question of over £52 million for the accounting period ending on 31 December 2012 and over £36 million for the period ending on 31 December 2013.

8. On 11 August 2014 the appellant wrote to HMRC raising concerns about the involvement of SI to perform what were described in HMRC's letter of 25 July 2014 as routine checks. On 3 September 2014 Mr Straughair replied to the appellant stating that SI are part of enforcement and compliance within HMRC and carry out inspections as required. He said his initial checks were with regard to employment income and any benefits received due to the appellant's positions as director. He noted that as none of the information and documents had been provided in response to the informal request of 25 July 2014, HMRC would proceed to issue a formal notice.

9. On 4 September 2014 Mr Straughair issued the formal information notice with the compliance date stated to be 6 October 2014. Mr Straughair stated he believed the requested information and documents were reasonably required to enable him to check the appellant's tax return for the tax year 2012/13 and set out the penalty consequences for failure to comply.

10. On 7 October 2014 Mr Straughair issued a penalty notice under para 39 of schedule 36 for a fixed penalty of £300 as none of the requested information or documents had been provided. In the letter he extended the deadline for compliance with the information notice to 4 November 2014 and noted that further daily penalties would arise for failure to comply.

11. On 3 November 2014 Mr Straughair telephoned the appellant to establish when he could expect the items set out in the information notice. The appellant explained that his legal team were drafting a response. Mr Straughair advised that further penalties would be charged if the deadline was not met as a reasonable period of time had been allowed for compliance.

12. In a letter dated 4 November 2014 the appellant wrote to Mr Straughair to inform him that he was in the process of making an application to the tribunal for closure of the enquiry as he was of the opinion that:

> "the current check is retaliatory in nature having its origin rooted in ulterior motive. I am aware that HMRC has initiated compliance checks in the accounts of companies I am associated with and I suspect that the current check in my personal account is an extension of the same series of checks and hence I wish to seek an immediate closure of the same."

13. It is not clear when the letter from the appellant dated 4 November 2014 was received by HMRC. HMRC thought it was sometime after 4 November 2014 but could not provide evidence to substantiate that. Mr Onalaja asserted that, given the date, it must have been received before 7 November 2014, the date the further penalty notice was issued.

14. On 7 November HMRC issued a penalty notice under para 40 of schedule 36 for further daily penalties due for the period from 8 October to 6 November 2014 of £600 calculated at £20 per day as the appellant had still not complied with the information notice. The new deadline for compliance with the information notice was stated to be 8 December 2014.

15. On 13 November 2014 the tribunal received an application from the appellant dated 12 November 2014 for a direction requiring HMRC to close the enquiry.

16. On 21 November 2014 Mr Straughair wrote to the appellant noting he had received a copy of the closure application and providing a description of why each requested item set out in the information notice was needed.

17. The information and documents requested in the letter of 25 July 2014 and in the later information notice of 4 September 2014 are listed below together with, underneath each item listed, Mr Straughair's explanation of why that item was needed taken from his letter of 21 November 2014:

(1) A description of the appellant's role and responsibilities as sole director of EHL:

> "Your roles and responsibilities will help me understand the control you have within the company which has a turnover of £52 million."

(2) Whether the appellant was signatory of any bank accounts for EHL:

> "This will help me to understand your role as a sole director of the UK company."

(3) A description of the appellant's role and responsibilities as director of Holdings and whether he was signatory of any bank accounts for this company:

> "This is an overseas territory company. I would like evidence of how your employment arrangements were allotted to you and

whether you receive any remuneration or benefits from the company."

(4) Whether the appellant was signatory of any bank accounts for Holdings:

"This is a BVI company and this information will help me to understand your role as a director of a BVI company."

(5) Details of any other positions the appellant held with other entities within the UK or overseas:

"I need to check which entities you hold shares, or are a director of and the extent of your holdings so that I can consider the degree of control you have in those companies. This is so I can ensure that your worldwide business interests are fully understood and considered when I am reviewing your means position."

(6) A schedule of any benefits or loans received by the appellant during the tax year as a result of any such positions:

"This information is needed so that I can take into account any benefits or loans you receive to help fund your lifestyle."

(7) Where the appellant has a directors loan account, a detailed and chronological description of all amounts received and repaid and evidence to support any repayments of the loans such as bank statements:

"Directors often enjoy the benefits of Directors' Loan Account, therefore, if you do have one this can affect your means position and I will need to take this into account"

(8) Personal bank or building society statements showing the full amount of employment income of £35,062.73:

"So that I can check the employment income in your personal tax return is correct."

(9) Employment contracts for EHL, Holdings and Venture Pharmacies Limited:

"To help me understand your role as a director both in the UK and overseas and as evidence of remuneration and benefits".

18. There followed some correspondence between the parties seeking to clarify the scope of the tribunal proceedings as it was not clear whether the appellant was appealing against the information notice and the penalties. (This was clarified following the tribunal hearing on 8 September 2015.)

19. On 10 July 2015 the appellant wrote to HMRC saying that to speed up the enquiry he proposed to provide the information requested. He provided the following information:

(1) The appellant stated that his responsibilities with EHL and Holdings are to determine the relevant company's strategic objectives and policies, monitor progress on achieving goals and objectives and appointing senior management.

He stated that the senior management of each company was responsible for the day to day running of the business and reporting.

(2) The appellant confirmed that he is a signatory of the bank account of EHL and that Holdings does not have a bank account.

(3) He confirmed he had worked as an accountant with Venture Pharmacies Limited.

(4) He confirmed he was provided with a car for official and personal use by each of EHL and Holdings.

(5) He confirmed that he does not have a director's loan account with the companies.

(6) As regards his employment income he referred to his return and P60 as proof of his income and stated that he did not have any other income.

(7) He confirmed he has no formal employment contract with EHL and Holdings and that his employment with Venture Pharmacies Limited was terminated on 30 November 2012.

20. On 19 August 2015 Mr Ian Cox wrote to the appellant stating he had taken over dealing with this matter.

Evidence of Mr Anderson

21. The case was later taken over by Mr Stephen Anderson on 1 October 2015 when he had joined the SI team. I found Mr Anderson to be a credible witness and I accept his evidence as set out below.

22. Mr Anderson currently works for the SI team (fraud and bespoke avoidance) as a business learning manager. He is a fully trained Inspector of Taxes specialising in corporation and income tax. He is tasked with providing guidance and assisting other officers in their enquiry cases.

23. Mr Anderson undertook a full review of the appellant's case on taking over the file on 1 October 2105. He confirmed that the facts set out in the witness statement of Mr Cox, which had been prepared for the purposes of the previous hearing on 8 September 2015, are correct. From his detailed review of the case, his view and he stated that of Mr Cox before him, is that a closure notice should not be issued as HMRC has not been able to ascertain whether or not the appellant's 2012/13 tax return is complete and accurate and cannot do so until further information and documents are supplied.

24. HMRC still need the appellant's bank statements in order to verify his income. P60s issued by EHL were provided but Mr Anderson was not satisfied that these provide sufficient independent verification of the appellant's income from EHL and Holdings. He noted that the appellant is the sole director of EHL, a signatory for its bank accounts, and a director of Holdings. He may be able to influence the figures entered in the P60s and control where funds go and what expenses are paid, in the case of EHL, without the scrutiny of other directors. Mr Anderson also wants to

check whether or not the appellant has any other sources of income. Given the very early stage of the enquiry, he anticipates that further information and documents will be required based on the responses the appellant has supplied to date. He would like the opportunity to meet with the appellant to investigate fully the concerns he has.

25. Mr Anderson considered that the amount of income declared by the appellant as earnings from EHL (being only £11,729) and from Holdings (being nil) seemed low given that the appellant appeared to have an "important/responsible role" as a director of these companies and that EHL had a substantial turnover. In 2012/13 the appellant left his role as an accountant with Venture Pharmacies Limited to focus on the two roles at EHL and Holdings but according to his tax return had an overall decrease in his salary. The appellant had been receiving salary as an accountant of £35,464 per annum. In his tax return he showed a total of £35,062 only as salary from all three roles for that year.

26. Mr Anderson was concerned these factors may be indicative that income and benefits have not been declared by the appellant. Mr Anderson wants to establish why the appellant took the roles with EHL and Holdings, precisely what his roles and responsibilities are with the companies and what checks and authorisations are in place within those companies. As regards EHL he noted:

> "I require information regarding [the appellant's] control of and full role he plays within the company. I therefore require an understanding of the hours that he works, how much support he receives in performing his role, and whether there are any other signatories for the company bank account."

27. As regards Holdings, Mr Anderson noted that it is registered in the BVI. He was concerned by the fact that no remuneration had been declared from this company at all. In his view there is a risk of remuneration being paid into another UK bank or an overseas bank account such that HMRC may need to see a schedule of bank accounts.

28. As the appellant does not have a formal employment contract with EHL or Holdings, Mr Anderson saw the need to establish the basis for his remuneration such as whether he received a bonus based on the company's performance and, if so, how often and how much.

29. Mr Anderson also noted in his witness statement that the appellant's tax return for 2011/12 was over 1 year late. He stated that this would have prompted him as an Inspector of Taxes to have concerns that the late submission of the return was due to the person owing additional tax and that it was usual in such circumstances for the Inspector to review the case and in some circumstances open an enquiry. He also said in his witness statement that the appellant's tax status needs to be established.

30. It was put to Mr Anderson by Mr Onalaja that the appellant has provided sufficient information already such that there are no reasonable grounds for the continuation of the enquiry:

(1) Mr Anderson again referred to the reasons set out above.

(2) He was asked to look at EHL' accounts and say why those, as audited accounts, did not suffice as evidence to show what funds had been extracted by the appellant. Mr Anderson noted that people may have other ways of extracting funds from a company without that being recorded in the accounts and he needed to verify the position.

(3) It was pointed out by Mr Onalaja that the appellant had said he was not really performing any work for EHL in the first six months of his role with EHL, as he was still working for Venture Pharmacies Limited, and that explained the low level of income from EHL (see 41(3)). Mr Anderson said that in his view it was in any event unusual that the appellant was receiving such a low level of income for what appeared to be a responsible director role. He queried why the appellant would assume a director role with all the attendant responsibilities with no increase in his previous salary.

(4) Mr Onalaja asserted that the appellant has not in fact failed to comply with his filing obligation for 2011/12 as he had been employed only by Venture Pharmacies Limited such that his income was dealt with under PAYE. Mr Anderson thought that was not correct as there was additional tax to pay for that year but he was not able to verify that at the hearing.

(5) Mr Onlaja questioned why Mr Anderson needed further information regarding the appellant's role with Holdings given it is dormant. Mr Anderson said that it is not verified that Holdings is dormant. It could, for example, have subsidiaries which it manages. In his view the information on Holdings needs to be tested for the reasons already given.

(6) Mr Onalaja noted that Mr Anderson had said in his witness statement that the appellant had not provided details of his tax status but in fact he has now confirmed he is UK domiciled. Mr Anderson said that the provision of that information of itself does not affect his view as the other reasons remained for the enquiry to continue.

31. Mr Anderson was questioned as to his knowledge of an enquiry being made by HMRC into the affairs of Gold Nuts Limited and related companies (the "**Gold Nuts group**"). He confirmed he was aware of this but his knowledge was limited and not detailed, in particular, as he had not been in the SI team for very long. Mr Anderson confirmed he had had no personal involvement in the Gold Nuts group matter whether whilst in SI division or previously nor so far as he was aware had any of his colleagues in his former team.

32. Since joining SI and becoming involved in the enquiry into the appellant's tax return for 2012/13, he was aware these enquiries are linked in a wider sense to other enquiries in HMRC. He was aware that the Gold Nuts group has a trade relationship with EHL. He was not aware of the precise trade model between the relevant companies but did know they are all in the pharmaceutical sector. He was not otherwise aware of the details of those enquiries or when they started. He had heard from colleagues that directors of Gold Nuts had raised complaints about HMRC's conduct.

33. He was also aware of enquiries relating to Qualapharm Limited and one of its directors but he had no detailed knowledge of those enquiries or which team in HMRC launched those enquiries.

34. Mr Anderson was asked a number of questions regarding the relationship between the SI office in Newcastle and an enquiries team in Portsmouth, which Mr Onalaja thought dealt with the enquiries into the Gold Nuts group. Mr Anderson explained that SI in Newcastle deal with a wide range of matters in relation to both individuals and companies. The staff at Newcastle did sometimes liaise with Portsmouth and he could obtain information from that office if needed for the purpose of his enquiries. He was asked if the Portsmouth team of HMRC invited his team to open the enquiry into the appellant. He said that this was not the case so far as he was aware.

35. He was asked if the enquiries were widened once complaints were raised by the directors of the Gold Nuts group as regards the enquiries into those companies. He said that HMRC only widen enquiries when there is a tax issue which requires it.

36. Mr Anderson stated that, so far as he was aware from his review of the matter, the enquiry into the appellant's 2012/13 was made as a routine enquiry which he described as being not out of the ordinary. In his view it is entirely normal for HMRC to enquire both into a company and its directors. When asked why SI was involved if this was a routine enquiry, Mr Anderson said that SI deals with a wide range of matters from fraud to routine cases.

37. When it was put to him that HMRC were harassing the appellant and trying to disturb his business interests as set out in the appellant's witness statement, Mr Anderson said that this was completely untrue. From his review of the matter, the enquiry was made only for the purpose of enquiring into the appellant's tax affairs. He referred again to the matters listed above as the reasons why the enquiry was made and needed to continue on the basis of the risks identified. So far as he could see from the file the officers involved had no ulterior motive when the enquiry was opened and he does not have such a motive. His aim is not to harass the appellant or disrupt the appellant's trade. His aim is merely to ensure that the appellant pays the correct amount of tax at the right time. Mr Anderson's only concern is the appellant's tax affairs. He noted that HMRC have the right to enquire into the appellant's tax affairs to ensure that his tax return for the relevant period is complete and correct.

Appellant's witness statement

38. As noted, the appellant did not appear at the hearing and no explanation was provided as to his non attendance. The appellant provided witness statements the contents of which are summarised below.

39. The appellant said that he had been concerned from the outset that HMRC's enquiry was not proper, in particular, due to the involvement of SI and he received no satisfactory explanation from HMRC. HMRC's Manuals at CH206150 refers to opening a dialogue with the taxpayer in an open manner but there was no such

attempt by HMRC. The appellant had resorted to making the closure application to the tribunal following the issue of the £300 penalty to get relief from "HMRC's unreasonable treatment".

40. The appellant stated that the law does not force taxpayers to assist HMRC where they do not have a lawful purpose. The involvement of SI in routine checks suggests HMRC is abusing their powers. The appellant understands that such checks are only to be carried out where HMRC has identified a risk or as part of HMRC's random enquiry programme. So it is implied HMRC must have a reasonable basis. If they had such a reasonable basis they would have informed the appellant of the reasons for the enquiry but they have not (see 42).

41. The appellant provided the following as reasons which he thinks mean satisfactory information has been provided to HMRC and their enquiries should not be continued:

(1) The remuneration received from EHL was paid to the appellant in his capacity as a director and is recorded in full in the P60s provided to HMRC. If anything else had been paid it would have been duly accounted for under the PAYE system by EHL or shown in a current account. The appellant does not have any current account or loan account with EHL which HMRC can check in the audited accounts of EHL.

(2) The appellant has confirmed he received no benefits from EHL or Holdings other than those declared.

(3) The appellant did not start receiving any earnings from EHL until December 2012 as in the period from June to November 2012 he was still working as an accountant for Venture Pharmacies Limited. The salary he then received from EHL remained more or less the same as that which he was receiving from Venture Pharmacies Limited. Hence, he received £11,729 from EHL for the period from 1 December 2012 until 31 March 2013.

(4) The appellant did not file his tax return for 2011/12 initially as he was only an employee obtaining a salary through the payroll of Venture Pharmacies Limited and was not required to file a self assessment return.

(5) Holdings is a holding company only and is not involved in any sort of trading activities and has no bank account. Hence why no funds were received by the appellant from this company.

(6) The appellant has confirmed that he is domiciled in the UK and has no overseas source income.

(7) The appellant has confirmed he does not hold a formal contract with EHL or Holdings and what his role is with those companies.

42. The appellant asserts that HMRC's enquiry is unlawful as it is based on a secondary motive rather than being within the scope of HMRC's routine compliance checks. The appellant bases this assertion on the following:

(1) Prior to the opening of this enquiry HMRC opened an enquiry into EHL in December 2013. Similar tax enquiries have been made into the affairs of EHL's trade associates, including Qualapharm Limited, which the appellant understands is also challenging the enquiry. Moreover:

> "the major nexus which roots back to the enquiries opened into the accounts of the companies coming under the Gold Nuts group of companies with which [EHL] also has trading relationships. It is to be noted that I have been part of this group in my capacity as an accountant for over 5 years. During my employment with Venture Pharmacies Limited I was aware that HMRC was checking the company's tax accounts sometime in early 2012, the same year when I resigned from this company. A year later a check was opened into the account of [EHL], which is a trade associate/customer of the group companies which [EHL] has very close trade relationships."

(2) The appellant stated he is also aware from the trade customers that the checks which are being made into Qualapharm Limited's tax affairs were also started due to the checks on the Gold Nuts group. The checks are all remarkably similar. They were opened by Mrs Douglas of HMRC in more or less the same time period. SI then started to look at the appellant's affairs as a director of EHL in July 2014.

(3) The appellant noted that EHL's business is that of a pharmacy trade and wholesaling of pharmaceuticals and the Gold Nuts group and Qualapharm Limited are large trade associates in more or less the same industry.

(4) The appellant said he believes the enquiries into his tax affairs are mainly due to the complaints made by the directors of the Gold Nuts group about the enquiries into those companies. As such HMRC has been acting punitively on the trade associates of the Gold Nuts group to try to get information on them. HMRC's enquiries are a fishing exercise which amounts to harassment and is disrupting EHL's trade with their close trade associates such as the Gold Nuts group. Such enquiries would make any customers reluctant to trade with EHL. Such proximity in time of the enquiries and the pattern followed by HMRC cannot be a coincidence

(5) The appellant has been regular in filing tax returns since becoming a director. There has been no default or wilful act to deceive or defraud the tax authorities.

(6) HMRC has acted irrationally and unreasonably only to harass the appellant as an innocent tax payer with no fault on his part. This is also demonstrated by HMRC insisting on continuing the enquiry where enough information has already been provided such that the enquiry could be closed. There is no valid basis for the continuation of the enquiry.

Law

Enquiry powers and closure notice

43. HMRC are pursuing an enquiry into the return under the provisions of s 9A TMA. The relevant provisions are as follows:

> "(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 enquiry") –
>
> (a) to the person whose return it is ("the taxpayer"),
> (b) within the time allowed……
>
> (4) An enquiry extends to-
>
> (a) anything contained in the return or required to be contained in the return, including any claim or election included in the return,"

44. Section 28A TMA provides as follows as regards the issue of a closure notice in relation to enquiries commenced under s 9A TMA.

> "28A Completion of enquiry into personal or trustee return
>
> (1) An enquiry under section 9A(1) of this Act is completed when an officer of the Board by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions.
>
> In this section "the taxpayer" means the person to whom notice of enquiry was given.
>
> (2) A closure notice must either—
>
> (a) state that in the officer's opinion no amendment of the return is required, or
> (b) make the amendments of the return required to give effect to his conclusions.
>
> (3) A closure notice takes effect when it is issued.
>
> (4) The taxpayer may apply to the tribunal for a direction requiring an Officer of the Board to issue a closure notice within a specified period.
>
> (5) Any such application is to be subject to the relevant provisions of Part 5 of this Act (see, in particular, section 48(2)(b)).

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

Information notice

45. HMRC's powers as regards information notices are set out in schedule 36 as follows (and all references to paragraphs below and in 46 to 50 are to paragraphs of schedule 36):

(1) An officer of HMRC may by notice in writing require a person to provide information or to produce a document, if the information or document is reasonably required by the officer for the purpose of checking the person's tax position (para 1).

(2) The person must provide information or produce a document required under such a notice (a) within such period, and (b) at such time by such means and in such form (if any) as is reasonably specified or described in the notice (para 7).

(3) An information notice does not require a person to provide or produce personal records (as defined in s 12 of the Police and Criminal Evidence Act 1984 ("**PACE**")) or information contained in such records, subject to sub-para (3) (para 19(2)).

(4) Personal records are defined in s 12 PACE as "documentary and other records concerning an individual … who can be identified from them relating (a) to his physical or mental wellbeing; (b) to spiritual counselling or assistance given or to be given to him; or (c) to counselling or assistance to be given to him for the purposes of his personal welfare by any voluntary organisation…".

(5) Under para 19(3) an information notice may require a person (a) to produce documents or copies of documents, that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records ("personal information") and (b) to provide any information contained in such records that is not personal information.

(6) Where a person has made a tax return under s 8 TMA HMRC cannot issue an information notice under these provisions for the purposes of checking that person's income tax position for the relevant period unless one of a number of conditions are satisfied, which include that notice of enquiry has been given in respect of the return and the enquiry has not been completed (para 21).

46. Where a person is given an information notice, he may appeal against the notice or any requirement in the notice (para 29).

47. 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 requirement, or (c) set aside the information notice or such a

requirement (para 32(3)). Where the tribunal confirms or varies the information notice or a requirement, the person to whom the notice was given must comply with the notice or requirement within such period as is specified by the tribunal or, if the tribunal does not specify a period, within such period as is reasonably specified in writing by an HMRC officer following the tribunal's decision (para 32(4)).

Penalties relating to information notice

48. A person who fails to comply with an information notice is liable to a penalty of £300 (para 39). If the failure continues after the date on which a £300 penalty is imposed, the person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure continues (para 40).

49. Liability to a penalty under para 39 or 40 does not arise if the person satisfies HMRC or, on an appeal to the tribunal, the tribunal, that there is a reasonable excuse for the failure (para 45).

50. A person may appeal against a decision that a penalty is payable or a decision as to the amount of such a penalty (para 47). On an appeal that is notified to the tribunal against a decision that the penalty is payable, the tribunal may confirm or cancel the appeal. On an appeal made to the tribunal in relation to the amount of the penalty, the tribunal may (a) confirm the decision or (b) substitute for the decision another decision that the HMRC officer had power to make (para 48(4)).

Appellant's submissions

Closure notice

51. The appellant's submissions are as follows. The burden of proof is on HMRC to establish that there are reasonable grounds for not issuing a closure notice within a specified period. These grounds should take account of proportionality on the authority of *Jade Palace Ltd v HMRC* [2006] STC 419 at [40]. Mr Onalaja also referred to statements made in that case at [38], [41], [43], [46] and [52]. He asserted on the basis of this case that the purpose of the relevant provision on closure is to protect the taxpayer against protracted HMRC enquiries and that HMRC do not have to be satisfied on every detail to make an assessment as they can use their best judgement as to what the correct figure is.

52. The enquiry is unlawful as HMRC have ulterior motives as set out in full in the appellant's witness statement. A statutory body such as the tribunal has jurisdiction to consider public law issues when carrying out the functions assigned to it by Parliament on the authority of *Wandsworth LBC v Winder* [1984] 1 AC 461 and *Garrod v HMRC* [2015] UKFTT 0353 TC at [56]. An enquiry must be opened for the sole purpose of checking the appellant's tax position. An enquiry opened for any other purpose would be opened for an improper reason and thus be unlawful on the authority of *Qualapharm v HMRC* [2015] UKFTT 479 TC at [35]. The appellant cannot be compelled to cooperate with an improper or unlawful enquiry (see *Garrod* at [54] and [55]).

53. The appellant does not have to take separate judicial review proceedings for such matters to be adjudicated. In creating the tribunal Parliament clearly intended it to have regard to and apply the law of the land when conducting its functions (see *Garrod* at [58]). Restricting all issues of public law to the administrative courts risks denying an appellant justice.

54. HMRC's actions contravene Article 8 of the European Convention on Human Rights.

55. In any event sufficient information and documents have already been provided such that there are no reasonable grounds for not issuing a closure notice within a specified period:

(1) The appellant has provided P60s showing his employment income and has confirmed he has no other income/benefits.

(2) It is alleged that, as the appellant is the signatory for bank accounts of EHL, he can control where funds go. However, EHL's accounts (which HMRC have) are audited and, although he is the director, others own EHL. He is not the sole director of Holdings. There is no evidence the appellant has any other income.

(3) The appellant has provided a satisfactory explanation as to why he only had low income from EHL in the 2012/13 tax year (see 41(3)).

(4) The appellant has provided details of his role at EHL and Holdings.

(5) HMRC allege that the appellant's failure to submit a tax return for the tax year 2011/12 on time was the reason for their suspicion but actually at that time the appellant was only within the PAYE system.

(6) HMRC state that because the appellant was director of EHL and Holdings he must have greater earnings but he had only been in these roles for a few months in the tax year in question. Holdings is in any event dormant. The appellant is not required to draw all available earnings from EHL in the first few months of his role.

(7) Mr Anderson refers to the fact that the appellant has no formal employment contract with EHL and Holdings. However, lots of people have no such contract especially when they have only been in a role for a few months.

Information notice

56. HMRC can require the provision of information and documents under schedule 36 if reasonably required for the purpose of checking the appellant's tax position. The burden of proof in that regard falls on HMRC (as set out in ***Thompson v HMRC*** [2013] UKFTT 103 TC at [62]).

57. It follows that in order for an information notice to be valid it must be for the sole purpose of checking the appellant's tax return. There cannot be an obligation on the appellant to comply where the information notice arises from an unlawful act by HMRC (see *Garrod* at [54] and [55]). The same issues arise in relation to the

unlawfulness of the information notice as in relation to the unlawfulness of HMRC's enquiries.

58. In any event, the appellant has provided sufficient information and documents to facilitate the check of the appellant's tax position for 2012/13 for the same reasons as set out above.

59. The request for the appellant to produce his personal bank statements will lead to the disclosure of personal records which is contrary to para 19(2) schedule 36. It was held in the case of *Smith v HMRC* [2015] UKFTT 0200 TC at [32] that it is possible that bank statements may include details of payments relating to the matters listed in s 12 PACE.

Penalties

60. As regards the penalties, the appellant cannot be liable for failing to comply where liability depends on a prior unlawful act of a public authority (based on the *Wandsworth* and *Garrod* cases).

61. In any event the appellant has a reasonable excuse for failure to comply with the information notice. This is an objective test as set out in the *Clean Car Company Ltd v Customs and Excise Commissioners* (1991) VATTR 239 which was cited with approval in *PML v HMRC* [2015] UKFTT 0440 (TC) at [81]. The notice of enquiry failed to provide any information regarding the risks identified and the reasons for the enquiry and the information notice failed to set out why HMRC believe each item is reasonably required. Therefore, the appellant was unaware of whether/why items requested were reasonably required. The appellant believed HMRC did not have a reasonable reason for requesting the items but that they were required for an ulterior purpose as set out in his witness statement. It was reasonable for the appellant not to provide the information given these issues.

62. It was unreasonable of HMRC to issue a notice for daily penalties of £600 after the appellant had notified HMRC in a letter dated 4 November 2014 that he was going to apply for a direction for closure of the enquiry, that date being the extended deadline for compliance with the information notice. Whilst it cannot be proven that the letter was received by HMRC on 4 November 2014, given the date, it must have been received before 7 November 2014 when the daily penalty notice was issued.

HMRC's submissions

Closure notice

63. HMRC made the following submissions. HMRC is entitled to enquire into the appellant's 2012/13 tax return under s 9A TMA. As noted at [34] of the decision in *Spring Capital Ltd v HMRC* [2015] UKFTT 0008 (TC), HMRC does not need to have or to notify the taxpayer of any suspicion in order to check a tax return. In any event HMRC has explained why the enquiry is needed and why it needs to continue as clearly set out in the evidence of Mr Anderson. The appellant has not yet provided all information required by the information notice so that the enquiry is at a very

preliminary stage and needs to continue for the reasons given by Mr Anderson. HMRC have not had sufficient time to complete the enquiry and it may be that further information will be required. There has been no undue delay. The majority of the time has passed due to delay by the appellant in providing the requested information and then due to awaiting the outcome of these proceedings.

Information notice

64. HMRC accept that a valid information notice may only require that which is reasonably needed for the purpose of checking a taxpayer's return (see the case of *Joshy Mathew v HMRC* [2015] UKFTT 139 (TC) at [185] and [186]). The information is reasonably required for the reasons given by HMRC in their evidence. As regards the requested bank statements containing personal information, as set out at [34] and [35] of the *Smith* case, any such information could be redacted in accordance with the provisions of para 19(3) of schedule 36.

Penalties

65. The appellant does not have a reasonable excuse for failing to comply with the information notice under the objective test which is to be applied. The information notice was properly issued, the appellant was properly notified of the required information, the deadline for its provision, the consequences of failure to comply and the appeal process. On 11 August 2104 the appellant raised a concern that SI team were conducting the enquiry. There is no reason why that team could not do so. The appellant complains that specific reasons were not given for the information requested. There is no requirement to give such reasons. It is not the action of a reasonable and prudent taxpayer simply not to provide the requested information by the specified date. Such a person would have at least appealed against the notice rather than just letting the deadline slip by.

66. HMRC notes that the appellant asserts that it was unreasonable to impose the further daily penalties of £600 in the notice of 7 November 2014 as the appellant had notified HMRC he proposed to make a closure application in a letter dated 4 November 2014. HMRC think the letter was not received until after the deadline of 4 November 2014 (given it is dated with the date of the deadline) and possibly not until after 7 November 2014 but cannot provide proof of precisely when it was received. In any event that is irrelevant as the appellant had simply failed to comply with the deadline for compliance with the information notice which triggers the daily penalties.

Abuse of power argument

67. As noted in *Joshy Mathew* at [187] the tribunal does not have judicial review jurisdiction. Any argument founded on an accusation of an abuse of power, whether raised in relation to the enquiry, the information notice or penalties, is not for the tribunal to consider. In any event HMRC are not abusing their power. There is no evidence of harassment by HMRC or that HMRC have ulterior motives as the appellant suggests. Mr Anderson has given evidence he is aware of the other enquiries to which the appellant refers but he is simply carrying out his duties as an

HMRC officer with responsibility for enquiring into tax returns. It is for the appellant to substantiate and bring evidence in support of his claims which he has not done. Even if there could be an argument that HMRC's behaviour constitutes harassment it is not clear what authority there is for concluding that means the enquiries are unlawful. It is not unlawful to conduct tax enquiries.

Discussion – closure notice application

68. Sub-section 28A(6) TMA provides that the tribunal shall direct that HMRC issue a closure notice within a specified period, unless the tribunal is satisfied that there are "reasonable grounds" for not issuing the closure notice within such a period. It is clear that the burden is on HMRC to demonstrate, on the balance of probabilities, that there are reasonable grounds for not issuing the closure notice. If HMRC cannot discharge that burden the tribunal must grant the application and direct HMRC to issue the closure notice within a specified period.

69. HMRC's powers to carry out enquiries are broad. Under sub-s 9A(4) HMRC can, by giving notice to the taxpayer within applicable time limits, enquire into any aspect of a return. There is otherwise no express fetter as such in this provision on the powers of HMRC in this regard. HMRC simply have to give notice to the taxpayer of the intention to enquire into a return within the time allowed. An enquiry may extend to "anything contained in the return or required to be contained in the return". Once the notice of enquiry has been correctly given within the applicable time limits, there is no limit on the period within which HMRC must raise any particular enquiry. Nor is there any restriction that, if initially HMRC identify one aspect of the return for enquiry, they cannot later include another aspect. HMRC do not need any particular reasons in order to launch an enquiry. They may pick taxpayers' affairs to enquire into at random.

70. The scope of enquiry powers given to HMRC makes sense in the context of a self assessment system. Under that system HMRC is reliant upon taxpayers for the accuracy of information supplied in the return. HMRC needs the ability to check and verify that information. HMRC is entitled to know the full facts relating to the appellant's tax return to make an informed decision as to whether there is a need for any further assessment and, if so, what to assess. It is an essential part of the self assessment system that HMRC has the ability to test the validity of information provided by taxpayers.

71. In effect the making of an application to the tribunal for a closure direction operates as a fetter on these enquiry powers where HMRC fails to satisfy the tribunal that they have reasonable grounds why the enquiry should not be closed within a specified period. The courts approach this as a form of balancing exercise, between achieving fairness for the taxpayer and having regard to ensuring the proper recovery of tax due.

72. For example in *HMRC v Vodafone 2* [2006] STC 483 at [44] Park J stated that the similar statutory provisions which apply to companies are "construed so as to produce a reasonable balance" between HMRC's enquiry and investigation powers on

the one hand and protection for those who wish to question whether the use of those enquiry powers continues to be justified. Similarly in *Tower MCashback v HMRC* [2011] STC 1143, Lord Walker noted (at [18]) that in issuing a closure notice an officer is performing an important public function in which fairness to the taxpayer must be matched by a proper regard for the public interest in the recovery of the full amount of the tax payable.

73. The appellant referred to the Special Commissioners' decision in the *Jade Palace* case which set out the following approach (at [38] to [46]):

> "38. I accept that the purpose [of the closure notice rules] is to protect the taxpayer, balancing the company's rights against those of the Revenue to make enquiries. [The rules] give protection against enquiries being left open for protracted periods…
>
> 39 There is no requirement for the Revenue to state the reasons at the outset and it is not the practice of the Revenue to do so. A proportion of returns are selected for enquiry on a random basis. Others are selected for reasons.
>
> 40 Once an application for closure is made it is however for the Revenue to show reasonable grounds for not giving the closure notice within a specified period. These grounds should take account of proportionality and the burden on the taxpayer.
>
> 41 The issue on such application is not simply whether a closure notice should be directed but whether it should be directed within a specified period. The reasonable grounds must cover the setting of a period.….
>
> 43 The longer the period of the enquiry, the greater the burden on the Revenue to show reasonable grounds as to why a time for closure should not be specified.
>
> 46….. the Revenue do not have to be satisfied in order to state their conclusions. If they are not satisfied, this will be part of the conclusion; in such a case the closure notice will go on to make a judgement as to what the correct figure should be.

74. In later cases in the tribunal, the tribunal has cited as relevant factors, the length of the enquiry, the information provided by the appellant, the further information sought and what the continuing enquiry may be expected to achieve. For example, in the case of *Estate 4 Ltd v HMRC* [2011] UKFTT 269 (TC) (again as regards the similar provisions applicable to companies) the tribunal said:

> "… the test to be applied by the tribunal is whether on an objective view it is appropriate for a closure notice to be issued. This involves close scrutiny of the questions put to the taxpayer and its

> advisers, the information provided in response and its adequacy, and the extent to which it appears to the tribunal that further enquiry would produce information enabling the company's corporation tax liability to be adjusted to a level differing from that shown in the return."

75. An HMRC officer does not have to have "pursued to the end every line of enquiry or investigation" for a closure notice to be ordered (see *Eclipse Film Partners No 35 LLP v HMRC* [2009] STC (SCD) 29 at [19]). However, equally HMRC ought not to be forced into making a decision prematurely without the full facts. In the case of *Stephen Price v HMRC* [2011] UKFTT, where the appellant had submitted that the enquiry could be closed and an estimated assessment made, the tribunal said that while HMRC has the power to issue an assessment on that basis:

> "HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody's time if HMRC are forced to make assessments without knowledge of the full facts. The statutory scheme is that HMRC are entitled to full disclosure of the relevant facts: this is why they have a right to issue (and seek the issue of) information notices seeking documents and information reasonably required for the purpose of checking a tax return (see Schedule 36 of Finance Act 2008)."

76. In this case the enquiry was opened on 25 July 2104. The appellant made the application for the tribunal to direct HMRC to close the enquiry on 12 November 2014. At that time the appellant had provided none of the information requested by HMRC informally in their letter of 25 July 2014 and later in the information notice of 4 September 2014. The appellant later responded to the various requests for information, other than as regards the provision of bank statements, in July 2015.

77. HMRC submit that they do not need to provide reasons for the opening of their enquiry but there were good reasons as set out in the evidence. HMRC assert that due to the appellant's delay in complying with the information notice, the enquiry is in fact at a very early stage. It is reasonable for the enquiry to continue due to the concerns identified by HMRC as set out in the witness evidence and as the appellant has not yet provided all the requested information. HMRC state that, to address their concerns fully, HMRC may need to make further enquiries and request further information, following full compliance with their initial information notice.

78. As noted above, there is no requirement in the legislation for HMRC to have a particular reason or to inform the taxpayer of specific concerns in opening an enquiry. HMRC may do so at random which accords with their need to be able to verify information provided by a taxpayer under a self assessment system. A failure to provide the taxpayer with full reasons for the enquiry at the outset does not, therefore, somehow invalidate the enquiry as the appellant seems to argue.

79. I note, however, that as set out in the *Qualapharm* case to which the appellant refers, such an enquiry may be regarded as not validly made where HMRC do not have a proper purpose as regards checking the taxpayer's tax position. In this case I do not need to consider the issue of the tribunal's jurisdiction in that respect as it is clear from the evidence that HMRC's purpose was and remains to check the appellant's tax position in 2012/13 (see 81).

80. I note that Mr Anderson commented that the appellant's lateness in complying with his 2011/12 filing obligations would of itself have lead him as an Inspector of Taxes to have concerns which could prompt the opening of an enquiry. However, on the evidence available to the tribunal at the hearing it was not possible to establish whether in fact the appellant failed to comply with his 2011/12 filing obligations on time. This does not affect my conclusion. It is clear that HMRC may open enquiries randomly such that no particular reason as to why the enquiry was prompted needs to be provided. In any event, Mr Anderson was merely noting this as an additional concern.

81. I accept HMRC's evidence that the purpose of their enquiry is to establish that the appellant has declared all taxable income and benefits for the tax year 2012/13. Their particular initial concern stems from the fact that in the 2012/13 tax year the appellant took up new posts as sole director of EHL, a UK company with substantial turnover, and as a director of Holdings, a BVI company, but declared only a low amount of salary from EHL, no salary from Holdings and only benefits from each company in the form of a car. HMRC's concerns are enhanced as the appellant is the sole director of EHL and has bank account signatory powers for EHL and Holdings is an overseas BVI company. There is nothing in the evidence available to the tribunal to suggest that HMRC's purpose is anything other than to check these matters and establish that the correct amount of tax has been paid. There is no evidence that HMRC had any ulterior motive as the appellant suggests (see 95 to 101).

82. This is clearly not a case where HMRC have been carrying out enquiries on a prolonged and protracted basis. In fact their enquiries are at a very preliminary stage. That the enquiry had been open for several months at the time the closure application was made by the appellant is attributable to the delay of the appellant in complying with the informal request for information and subsequent information notice. The matter has largely been on hold subsequently pending the outcome of these proceedings.

83. I also accept HMRC's reasons for wanting to continue the enquiry are as set out in the evidence of Mr Anderson and that those are valid reasons for the enquiry to continue. The information provided by the appellant to date is not sufficient for HMRC to be able to verify that the appellant has declared the correct amount of taxable income and benefits in the tax year 2012/13.

84. The appellant refers to the P60s provided by EHL, the audited accounts of EHL and his own confirmations as sufficient to evidence that he has correctly declared his income and benefits. He notes that he had a low salary from EHL as he was only working for EHL for part of the 2012/13 tax year, that he was not obliged to draw

substantial funds from the company in the early part of his role and that Holdings was in effect dormant.

85. However, taking into account that the appellant has declared low income and benefits only having taken on roles as director of two companies, that he is the sole director of EHL and signatory for its bank accounts, that EHL has substantial turnover and that Holdings is an overseas company, my view is that HMRC have reasonable grounds for wanting to obtain further verification of the taxable amounts declared. To date HMRC has received only the appellant's own confirmation or documentation such as P60s provided by EHL and the accounts of EHL, which on the face of it, is all information which the appellant can at least in some measure control. The appellant has provided very limited information to date on his role and responsibilities with EHL and Holdings (see 19) and he has not provided the requested bank statements. It is clear that HMRC are not be able to verify whether the employment income tax figures and benefits shown in his 2012/13 tax return are correct without further enquiry of the kind they propose.

86. As HMRC are only at the stage of reviewing the information initially requested and await the further bank statements, the enquiry is at such a preliminary stage, that it is not possible to put any realistic time frame on how long the enquiry will take to complete. In the absence of the full information, HMRC are not yet at the stage of being able to identify fully what further enquiries are needed let alone being able to conclude what, if any, amendment is required to the taxpayer's return. At the present time that would be a matter of speculation only.

87. My conclusion, therefore, is that I am satisfied that there are reasonable grounds for not requiring HMRC to issue a closure notice within a specified period. The appellant may of course apply again for a closure notice at a future stage.

88. As indicated briefly above, I do not consider that there is any merit in the appellant's argument that HMRC's actions are unlawful. As the appellant has made the same point in relation to the information notice and the penalties, this is addressed further below.

Discussion – Information Notice

89. It follows from what I have said above that I regard the information and documents required by HMRC in the information notice as reasonably required for the purpose of checking the appellant's tax return for 2012/13.

90. As regards the bank statements yet to be provided, I consider these reasonably required to verify the appellant's employment income and benefits position given the concerns identified by HMRC as set out in the evidence (and see 81). I note that it is possible that such bank statements may include details of a payment relating to the matters listed in s 12 PACE as the appellant argues. This can be addressed by allowing the appellant to remove any such items from the statements in accordance with para 19(3) of schedule 36. I have provided for the variation of the information notice in this respect (see 104 below).

91. I do not consider it necessary to consider in detail the question of on which party the burden of proof lies as regards whether the documents and information are reasonably required. It is clear that, regarding the burden of proof as being on HMRC, they have satisfied it.

Discussion - Penalties

92. The appellant has provided no viable argument that he has a reasonable excuse for the failure to comply with the information notice.

93. The appellant notes that he was not given specific reasons for the launch of the enquiry, the issue of the information notice or why each item was required before the time when the penalties were issued. As set out above, HMRC are not required to provide such reasons as regards enquiries. There is also no statutory obligation to provide such reasons as regards an information notice. In any event, the general purpose for which HMRC was making the check and requiring the information was stated by HMRC to be that of checking the appellant's employment income tax and benefits position for 2012/13. The appellant says that, as he was not given more specific reasons, it was reasonable for him, on the basis of his suspicions, to conclude that HMRC had ulterior motives and unlawful reasons for making the enquiries and issuing the information notice. As set out in 95 to 101 below, I can see no basis for the appellant's views. A taxpayer, acting reasonably, would not assume he was entitled not to comply with an information notice issued by HMRC simply because he is not given a detailed explanation and is aware others, with whom he has a business association, are being enquired into.

94. That the appellant may have notified HMRC of his intention to make a closure notice application at or slightly before HMRC issued the notice regarding the daily penalties of £600 is irrelevant. The further penalties were issued because the appellant had failed to comply with the information notice by the extended deadline of 4 November 2014. Writing a letter notifying HMRC of an intention to make an application for a direction for a closure notice to be issued on the same day as the deadline, having failed to comply with the deadline, is not a reasonable excuse.

Discussion – Unlawful/abuse of power argument

95. The appellant argues that HMRC's actions in bringing and seeking to continue their enquiry are unlawful and therefore he cannot be compelled to comply with the enquiries or the information notice or be held liable for penalties for failing to do so. The appellant cites a number of cases in support of his view including *Wandsworth*, *Garrod* and *Qualapharm*. HMRC state that the tribunal does not have jurisdiction to consider such abuse of power arguments referring to the *Joshy Mathew* case where it was stated at [187] that the tribunal does not have a judicial review jurisdiction.

96. I was not provided with extensive argument on the issue of the tribunal's jurisdiction in this respect. However, I do not consider that I need to decide whether the tribunal has such jurisdiction in this case as there is no evidence which supports the appellant's assertion that HMRC's enquiries and information requests are

improperly made in retaliation for challenges made to HMRC by the parties in the Gold Nuts group, by way of harassment and/or to disturb trading relationships.

97. The assertions are made by the appellant in his witness statement. He did not attend to give evidence on this. He asserts that the unlawful purpose or motive is apparent essentially on the basis that HMRC is also enquiring into other companies with which EHL has a business relationship and the pattern and timing of those enquiries which he states cannot be a coincidence. He asserts that the enquiries into Qualapharm Limited and EHL and himself were made as a result of the complaints of the directors of the Gold Nuts group, as a fishing exercise to get information on them and to disrupt trade relations. He also notes that the enquiry was launched by SI, that he was not given full reasons for the enquiry or the information required and that HMRC has no valid basis for continuation of the enquiry.

98. No evidence was presented by the appellant as to the nature or extent of the relationship between EHL, the appellant, Venture Pharmacies Limited, the Gold Nuts Group and Qualapharm Limited and any individuals involved with those entities. He merely asserts that the Gold Nuts Group and Qualapharm Limited are customers/clients in the same sector as EHL. Mr Anderson confirmed that he was aware that there was some form of trading association between some of these entities and that they operate in the pharmaceutical sector but he had no detailed knowledge. I am unable to make any conclusion, therefore, as to the nature and extent of any association between these entities and the individuals involved in them but merely that there is some kind of trade or business relationship.

99. Accepting that there is some kind of business relationship between these entities and the relevant individuals, I do not consider that any such conclusion as the appellant argues for can be drawn simply from the fact that HMRC happens to be enquiring into parties which have such an association. I cannot see that the fact that HMRC is enquiring into parties between whom there exists a business relationship of some kind and that there may well be an awareness within HMRC of a link between those enquiries, justifies a conclusion that HMRC must have some motivation other than that of checking the tax position of each entity or person in question.

100. Nor can any adverse inference be drawn from the fact that the enquiry was opened and is being conducted by SI or that HMRC did not initially give specific reasons for the enquiry or the information requested. I accept the evidence that SI enquire into a range of matters. HMRC stated the general reason for the enquiry and there is no statutory obligation to provide further reasons.

101. As set out above, there is no evidence that HMRC has opened the enquiry into the appellant or is continuing with the enquiry for any other purpose than as regards the appellant's tax affairs. Mr Anderson was clear in his evidence that there is no such motive as the appellant suggests and there is nothing in the documents produced to the tribunal which support the appellant's assertions. Overall, as set out above, it is clear from Mr Anderson's evidence, from the valid nature of the concerns raised and the nature of the information required from the appellant that HMRC are pursuing this

enquiry to verify the appellant's taxable income and benefits for 2012/13 and that he does not have any other taxable income.

102. For the same reasons, the appellant has no basis for an argument that HMRC's actions are in contravention of Article 8 of the European Convention on Human Rights given that there is no evidence that HMRC is acting in any way other than in accordance with their statutory powers of enquiry and information gathering.

Conclusion

103. For all the reasons set out above, the appellant's application for the tribunal to direct that HMRC should close their enquiry into his tax return for 2012/13 is refused and the appeals against the information notice and the related penalties are not allowed except that the information notice shall be varied as set out in 104.

104. The information notice shall be varied by the removal of the current requirement as regards the provision of personal bank or building society statements to be replaced by the following:

> "Provide personal bank or building society statements showing the full amount of employment income of £35,062.73 except where any sheet of any such statement includes receipts or payments relating to (a) your physical or mental health, (b) spiritual counselling or assistance given or to be given to you or (c) counselling or assistance given or to be given to you for the purposes of your personal welfare, by any voluntary organisation or by any individual who (i) by reason of his office or occupation has responsibility for your personal welfare or (ii) by reason of an order of a court has responsibilities for your supervision, you are required to produce such bank statements or building society statements omitting any such personal information as listed but providing all other information."

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

HARRIET MORGAN
TRIBUNAL JUDGE

RELEASE DATE: 9 MAY 2016