



TC07281

Appeal number: TC/2018/03081

Income tax – Paragraph 1 Schedule 36 Finance Act 2008 notice to provide information – whether items were reasonably required for the purposes of checking the taxpayer’s tax position – yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JUPITER ONLINE LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MEMBER JO NEILL**

**Sitting in public at Taylor House, Rosebery Avenue, London on 22 November
2018**

The Appellant did not attend and was not represented

Mr Matthew Beattie, Officer of HMRC, for the Respondents

DECISION

The Appeal

1. This was an appeal under paragraph 29(1) of Schedule 36 to the Finance Act 2008. The appeal was against a notice issued to Jupiter Online Limited ('Jupiter' or 'the Company') by the respondents ('HMRC') on 25 January 2018 under paragraph 1 of Schedule 36, during the course of an enquiry into the 2014-15 and 2015-16 tax returns of Jupiter, requiring documents and information for the purpose of checking the Company's tax position. We dismissed the appeal and now set out reasons for our decision in full.

Legislation

2. The relevant statutory provisions of Schedule 36 Finance Act 2008 are as follows:

3. Under paragraph 1, HMRC 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 HMRC for the purpose of checking the taxpayer's tax position.

4. Paragraph 18 (Restrictions on Powers) provides that an information notice only requires a person to produce a document if it is in the person's possession or power. There is no equivalent provision in relation to information.

5. Under paragraph 21, where a person has made an income tax return, a notice under paragraph 1 ("a notice") may only be given for the purpose of checking that person's tax position where, or to the extent that, any of conditions A to D has been met:

- (1) Condition A includes where a notice of enquiry has been given in respect of the tax return, and the enquiry has not been completed.
- (2) Condition B is that HMRC has reason to suspect that (amongst other things) an amount that ought to have been assessed to tax for the chargeable period may not have been so assessed or has become insufficient.

(Conditions C and D are not relevant to this decision).

6. Under paragraph 29(1), a taxpayer who has been given a notice may appeal against the notice or any requirement in the notice.
7. Under paragraph 32(3), on an appeal the First-tier Tribunal (“the tribunal”) may
 - (a) confirm the notice or a requirement in the notice,
 - (b) vary the notice or such a requirement, or
 - (c) set aside the notice or such a requirement.
8. Under paragraph 32(4), where the tribunal confirms or varies the notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement:
 - (a) within such period as is specified by the tribunal, or
 - (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by HMRC following the tribunal’s decision.
9. Under paragraph 32(5), notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 a decision of the tribunal is final.
10. Under paragraph 58, “checking” includes carrying out an investigation or enquiry of any kind.
11. Under paragraph 62 “information or a document” forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve under and by virtue of the Taxes Acts and any other enactment relating to a tax.
12. Under paragraph 64, “tax position” in relation to any person means the person's position as regards any tax.

Background

13. Jupiter was incorporated on 15 October 2003. Mr Mark Aylwin Turner has been a director of the Company since its incorporation. Ms Tina Loraine Ban’dyle was a director of the Company from its incorporation until 1 September 2014. Ms Doreen Turner/Nash (now deceased) was the Company secretary from 15 October 2003 until 12 December 2015.
14. The Company’s business is registered at Companies House as ‘accounting and auditing activities’.
15. Jupiter first came to HMRC’s attention during a review of the director, Tina Ban’dyle, which was started in December 2013. At that time, Jupiter was a dormant Company. This review was carried out because of Ms Ban’dyle’s involvement in

another set of arrangements run via Choice Premier Ltd ('Choice Premier'). In addition, both directors at the time (Mark Turner and Tina Ban'dyle) were known to be involved with UK entities that were promoting and operating known tax avoidance schemes. Some of these included Choice Premier (loans in depreciating foreign currencies), Keypay (loan via trust), Kinsella (loan via trust) and Runnymede Services (loans in depreciating foreign currencies). All of these are under investigation by HMRC.

16. HMRC's investigations into Jupiter and another company, IFL Management Ltd ('IFL') of which Ms Ban'dyle was also a company director, show that the two companies are closely linked and IFL has paid substantial sums of money to Jupiter for services which are not yet entirely clear.

17. HMRC say that Jupiter is an umbrella company that facilitates a mass marketed tax avoidance scheme, known internally in HMRC as 'Mapleseed'. Documents obtained show that users were leaving a previous scheme which involved depreciating foreign exchange currencies ('FOREX') operated through Choice Premier and were being invited to use an alternative scheme operated through Jupiter and based on interest free loans.

18. The scheme operated through Jupiter was not disclosed to HMRC and only came to their attention as a result of investigations into the other entities.

19. HMRC did not initially know which other companies were involved, but enquiries and a review of the accounts showed that Choice Premier, IFL, and two other companies, Computer Contracts Ltd and IT Contracts Finance Ltd were involved.

20. The scheme was identified as having commenced in the tax year 2013-14 and involved circa 200 individual contractors during the tax years 2013-14, 2014-15 and 2015-16. It is understood by HMRC that the scheme has now ceased but this cannot yet be confirmed.

21. The scheme operated via Jupiter involves an individual contractor who enters into a contract of self-employment with a UK Limited Liability Partnership ('LLP') which provides services to an end user client via Jupiter and that a contract is made between Jupiter and a UK intermediary (IFL in this particular scheme) for the provision of the contractor's services. IFL then enters into a contract with the end user for the supply of the individual contractors' services.

22. Payment for the individual contractors' services moves from the end user client to IFL and then to Jupiter. It is then split so that a percentage of the money, thought to be around 25% (as evidenced from fees data received from the end user clients), is paid to the UK LLP and on to the individual contractor, who declares it on his self-assessment return as self-employed income. The remainder of the money is paid to Mete Corporation ('Mete'), which is registered off-shore in the Seychelles. The money is then paid to Mapleseed Ltd, which is registered off-shore in the United Arab

Emirates. This is understood to be paid directly by Mete, but has not been confirmed as the transactions happen offshore.

23. The address shown on Mete's website is in the Seychelles, however the phone number shown is in Bracknell, suggesting its operations may be being conducted from the UK. HMRC say that none of the links on the site home page appear to work.

24. Mapleseed pay interest free loans to the individual contractors. It is believed that a trust (Advantage Trust) based in Belize then repays the loan directly to Mapleseed, but it is not yet fully understood how this happens as the transactions occur overseas.

25. The former FOREX scheme also involved Mapleseed allegedly carrying out FOREX trades. This was identified from documentation obtained through the course of the investigations into that scheme.

26. Jupiter receives large amounts of money from IFL. The net amounts (after VAT) received from IFL in the account period ended 30/09/15 was £4,688,902 and for the period ended 30/09/16 was £4,106,099. A significant proportion of these monies were paid by Jupiter to Mete in both periods.

27. HMRC determined that information and documents was required in order to investigate and understand the nature of these payments, to check the accuracy of the sales and to reconcile the figures within the Company accounts. Additionally, the information was required to establish what work was being carried out for IFL and whether the sales figures were accurate, as well as the nature of the work/services being provided by Mete to establish if the deductions are accurate/reasonable for the work undertaken.

Evidence

28. HMRC produced two bundles of documents for the hearing. These included correspondence between the parties, various documents provided by Jupiter in response to the Schedule 36 notices, the accounts and corporation tax computations and returns for the two years 2015 and 2016, invoices issued by Jupiter for the same two years, invoices issued by Mete for those two years and Barclays Bank statements of the period for 23 December 2014 to 12 September 2016. The bundles also included the Schedule 36 notices, the appeal and a skeleton argument by HMRC including a witness statement provided by Belinda Jeannette Cousen, the Compliance Caseworker, who conducted the enquiry. We were also provided with copy relevant legislation and case law authorities. Jupiter's appeal submissions were limited to those set out in its notice of appeal. The Company was not represented at the hearing and it did not provide a statement of case or skeleton argument.

The Schedule 36 notices

29. On 21 July 2017 HMRC wrote to Jupiter requesting information and documents as part of their checks into the Company's tax returns for the accounting periods ending 30 September 2015 and 30 September 2016.

30. Accompanying each of HMRC's letters was a document entitled '*Schedule of information and documents needed to carry out our check*'.

31. The schedule for the accounting year 2014-15 asked for the following information and documents:

- 1) The trade which the business undertakes.
- 2) *An itemised breakdown of* how the sales/turnover of £4,688,902 arose.
- 3) *An itemised breakdown of* the purchases of £4,688,902 and who these payments were made to.
- 4) Full details of any estimates, reserves, provisions or balancing figures included in the financial statements, how these were arrived at and how precisely they have been dealt with.
- 5) A list of all bank and building society accounts operated by the Company, including accounts held outside the UK, together with full details of the accounts including the name of the bank, the address and the account number.
- 6) The prime records used by the Company to complete the accounts for the period.
- 7) A copy of the first trial balance, all journals with narratives, and the final trial balance or extended trial balance. It is important to be able to identify the links between the prime records and the figures shown in the accounts.
- 8) A copy of the sales and purchase ledger accounts or equivalent.
- 9) Copies of all invoices relating to the turnover figure of £4,688,902.
- 10) Copies of any inter-company accounts operated in the year.
- 11) A copy of the directors' loan/current account(s) for the period to 30 September 2015 including a detailed analysis to include dates, amounts of transactions and the source of transactions both in and out of the loan accounts, as well as details of the source of any capital introduced by the directors.
- 12) Copies of cash and bank reconciliations.
- 13) Copies of bank and building society accounts, statements for all accounts operated by the Company, including accounts held outside the UK.
- 14) A Full breakdown of the following:
 - a. Trade debtors of £186,465.
 - b. Trade Creditors of £88,835
 - c. Other Creditors of £50,899
- 15) Copies of any contracts and/or agreements between Jupiter and any other entity. This should include, but is not limited to:
 - a. UK Companies
 - b. UK Limited Liability Partnerships

c. Any offshore company, trust, partnership or any other entity not named here.

32. The schedule for the accounting year 2015-16 asked for the following information and documents:

- 1) *An itemised breakdown of* how the sales/turnover of £4,106,099 arose.
- 2) *An itemised breakdown of* the purchases of £4,106,099 and where and who these payments were made to.
- 3) Full details of any estimates, reserves, provisions or balancing figures included in the financial statements, how these were arrived at and how precisely they have been dealt with.
- 4) A list of all bank and building society accounts operated by the Company, including accounts held outside the UK, together with full details of the accounts including the name of the bank, the address and the account number.
- 5) Full breakdown of the following:
 - a. Current Assets of £260,533
 - b. Creditors of £263,999
- 6) The prime records used by the Company to complete the accounts for the period.
- 7) A copy of the first trial balance, all journals with narratives, and the final trial balance or extended trial balance. It is important to be able to identify the links between the prime records and the figures shown in the accounts.
- 8) A copy of the sales and purchase ledger accounts or equivalent.
- 9) Copies of all invoices relating to the turnover figure of £4,106,099.
- 10) Copies of any inter-company accounts operated in the year.
- 11) A copy of the directors' loan/current account(s) for the period to 30 September 2016. Please provide a detailed analysis to include dates, amounts of transactions and the source of transactions both in and out of the loan accounts, as well as details of the source of any capital introduced by the directors.
- 12) Copies of cash and bank reconciliations.
- 13) Copies of bank and building society accounts, statements for all accounts operated by the Company, including accounts held outside the UK in the period 30 September 2016.
- 14) Copies of any contracts and/or agreements between Jupiter and any other entity. This should include, but is not limited to:
 - a. UK Companies
 - b. UK Limited Liability Partnerships
 - c. Any offshore company, trust, partnership or any other entity not named here.

33. On 26 September 2017, HMRC wrote to Jupiter stating they would be checking the Company's return under Paragraph 24(1), Schedule 18 of the Finance Act 2008 and enclosed factsheet CC/FS1a entitled 'General Information about compliance checks'.

34. On 9 October 2017 Mark Alwyn Turner replied, stating his interpretation of the scope of an enquiry, but in relation to Schedule 18 Finance Act 1988. He said that in his view HMRC could “enquire into anything contained in the corporation tax return” but anything further exceeded their authority.

35. On 23 October 2017 HMRC wrote to Jupiter stating that the enquiries were being widened as the Company accounts did not provide sufficient information to verify the accuracy of its returns. A revised schedule requesting documents and information was attached. HMRC had previously requested ‘full details...’ in paragraphs 1 and 2 of the original schedules. The amendments in the revised schedules are identified by the italicised words [see paragraphs 31(1) and (2) and 32(1) and (2)].

36. On 2 November 2017 Jupiter provided statutory records for the periods in question.

37. Because Jupiter had not provided all the information set out in the amended Notice served on 23 October 2017, on 25 January 2018 HMRC sent a further (final) Schedule 36 Information Notice to Jupiter expressly identifying the documents and information outstanding. HMRC also included a request for further information and documentation and requested that these be delivered by 2 March 2018.

38. The Notice asked Jupiter to provide:

- 1) Full details of any estimates, reserves, provisions or balancing figures included in the financial statements and how these were arrived at and dealt with.
- 2) The prime records used by the Company to complete the accounts for the period.
- 3) A copy of the first trial balance, all journals with narratives, and the final trial balance or extended trial balance. It is important to be able to identify the links between the prime records and the figures shown in the accounts.
- 4) A copy of the sales and purchase ledger accounts or equivalent.
- 5) Copies of any inter-company accounts operated in the year.
- 6) A copy of the directors’ loan/current account(s) for both accounting periods. A detailed analysis to include dates, amounts of transactions and the source of transactions both in and out of the loan accounts, as well as details of the source of any capital introduced by the directors.
- 7) For the accounting period ended 30 September 2015, a full itemised breakdown of the following:
 - a. Trade debtors of £186,465.
 - b. Trade Creditors of £88,835
 - c. Other Creditors of £50,899
- 8) For the accounting period ended 30 September 2016, a full itemised breakdown of the following:
 - a. Current Assets of £260,533
 - b. Creditors of £263,999

- 9) How the professional fees received from IFL Management Ltd are calculated.
- 10) How the professional fees paid to Mete Corp are calculated.
- 11) Copies of any contracts between Jupiter and IFL Management Ltd for the services provided.
- 12) Copies of any contracts between Jupiter Online Ltd and Mete Corp for the services received.
- 13) Advise what trade the business carries out and the nature of the professional services provided to IFL Management Ltd.
- 14) Advise the nature of the professional services Mete Corp provided to Jupiter Online Ltd.
- 15) Copies of any correspondence between Jupiter Online Ltd and IFL Management Ltd regarding the services provided.
- 16) Copies of any correspondence between Jupiter and Mete Corp regarding the services received.
- 17) The Bank Statements show a payment out of £26,471.43 on the 26.08.16 with the reference 'Jupiter'. Please provide an explanation of what this payment relates to and who the recipient was.
- 18) I am unable to reconcile the Sales Invoices with the 'money in' shown on the Bank Statements as follows:
 - a. Accounting period ended 30.09.15 - gross sales invoices £5,237,183; 'money in' £5,129,379
 - b. Accounting period ended 30.09.16 - gross sales invoices £4,927,319; 'money in' £4,877,937

As the accounts for both periods show neither prepayments nor accrual amounts, please provide a reconciliation of which payments relate to which invoices and explain the reason for the apparent discrepancies.
- 19) I am unable to reconcile the Purchase Invoices with the 'money out' shown on the Bank Statements as follows:
 - a. Accounting period ended 30.09.15 - purchase invoices £4,688,902; 'money out' which appears to relate to cost of sales £4,898,870.
 - b. Accounting period ended 30.09.16 - purchase invoices £4,106,099; 'money out' which appears to relate to cost of sales £5,205,716.

As the accounts for both periods show neither prepayments nor accrual amounts, please provide a reconciliation of which payments relate to which invoices and explain the reason for the apparent discrepancies.
- 20) Sales invoice No. 1 covering months September 2014 to December 2014 is dated 31 December 2014. HMRC's records indicate that the application for a VAT registration number was not signed by Mr Turner until the 13 March 2015. Please explain how you were aware of the VAT number 208477691 quoted on the invoice dated 31/12/2014.

39. On 30 January 2018 Jupiter provided a partial response that included the nominal ledger accounts, the sales ledger, purchase ledger, director's capital/loan account, the VAT liability account and account listings for all nominal, sales and purchase ledger accounts for 2015 and 2016. The Company said that items 9 to 16 were being appealed on the grounds that the information was not reasonably required to check the taxpayer's position and that an explanation had already been provided for the query raised in respect of item 17. Items 18 and 19 were appealed on the grounds that the

information was not reasonably required and finally it was averred item 20 was not relevant to Corporation Tax.

40. On 27 April 2018, having reviewed the appeal, HMRC wrote to Jupiter to say they were not looking to pursue points 18, 19 and 20, however items 3, 7, 8 and 9-16 were not considered resolved and that additional information/documentation was required.

41. On 9 May 2018 Jupiter wrote to HMRC enclosing further documentation/information for items 3, 7 and 8 of the Information Notice and filed a Notice of Appeal with the tribunal against items 9 to 16.

Burden and Standard of proof

42. It is generally established that the burden of proof in relation to the “reasonably required” test rests on the appellant, and not on HMRC. It is the taxpayer who knows the relevance of information or documents to his tax position, because he knows the full facts. The position depends on the circumstances and the type of information requested and it is for the tribunal to determine where the burden of proof lies.

43. The point was considered in *Joshy Matthew* [2015] UKFTT 0139 by Judge Redston at paragraphs [66] - [87]. After reviewing the relevant case law, Judge Redston explained there were cogent reasons as to why the burden of proof of establishing that documents and information are reasonably required rests with the appellant. Judge Redston said (at [82] -[84]):

“82.We find that the weight of authority is that the burden of proof in relation to the ‘reasonably required’ test in Sch 36 Notices rests on the appellant, and not on HMRC.

83. We note that this is consistent with the position in substantive tax appeals. In *Nicholson v Morris* [1977] STC 162, Goff LJ approved the words of Walton J, when he said that the reason for this was that:

“it is the taxpayer who knows and the taxpayer who is in a position (or, if not in a position, who certainly should be in a position), to provide the right answer, and chapter and verse for the right answer.”

84. If the burden of proof in relation to the ‘reasonably required’ test rests on the appellant, then a similar rationale could be put forward: it is the taxpayer who knows the relevance of information or documents to his tax position, because he knows the full facts. 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.”

44. More recently Judge Beare in the case of *Hundal v HMRC* (TC/2016/06517,

TC/2017/00796 and TC/2017/00804) said at [17] that:

“[17] Like the First-tier Tribunal in each of *Joshy Matthew v The Commissioners for Her Majesty's Revenue and Customs* [2015] UKFTT 139 (at paragraphs [68] to [87]), *Gold Nuts and Others v The Commissioners for Her Majesty's Revenue and Customs* [2017] UKFTT 354 (at paragraphs [60] to [63]) and *Codexe Limited v The Commissioners for Her Majesty's Revenue and Customs* [2017] UKFTT 569 (at paragraph [45]), I am inclined to think that it should be for the Appellant to prove that a relevant notice does not satisfy the language in paragraph 1 Schedule 36 FA 2008 (rather than for the Respondents to prove that it does).....”

45. For the reasons given in *Joshy Matthew* and *Hundal*, HMRC assert that the burden of proof lies with Jupiter. It is for the Company to show that the information requested by the information notice is not reasonably required for the purpose of checking its tax return.

Appellant's grounds of appeal

46. Jupiter's grounds of appeal, as set out in its notice of appeal are:

“We are appealing items 9 to 16 of the original Schedule 36 Finance Act 2008 [notice] for the following reasons.

- i. These items are not necessary for checking the accuracy and completeness of the relevant Corporation Tax return. All accounting and statutory records required to check the return have been provided.
- ii. The reasons provided by HMRC for requiring items 9-16 are either spurious or not provided for in Schedule 36 legislation, namely:
 - a) Commerciality of the business - this is only relevant to Corporation Tax where the entity is carrying out more than one trade, where the losses of one trade are offset against the profits of another trade. This is clearly not applicable in this instance, as only one trade is carried out.
 - b) Transfer pricing - this is only relevant where connected parties use artificial pricing, there are no connected parties nor artificial pricing operated in this instance.
 - c) HMRC say “I need to have sufficient information to try and understand how the company is run, what relationship the company has with other entities it is involved with and its relationship with IFL Management Ltd and Mete Corp” - none of which is required to check the tax position of the tax payer, and so not within the scope of Schedule 36.
 - d) HMRC also says “Furthermore, I believe it is reasonable to ask for this information in order to understand the nature of payments coming in and out of the company. This will help me check the accuracy of the sales and deductions and reconcile the figures within the company returns”. This reason does not stand up to scrutiny as the sales and deductions figures in the return are based solely on customer invoices and supplier invoices as is the legal requirement for preparing/producing the Corporation Tax return. No reconciliation is required or useful for

Corporation Tax purposes and so the reason is not provided for within Schedule 36.”

HMRC’s submissions.

47. Of the items listed in the Schedule 36 information notice, items 9) to 16) (inclusive) are outstanding.

48. Schedule 36 enables HMRC to require information or documents if the information or documents are reasonably required for the purpose of checking the taxpayer’s tax position.

49. Case law provides guidance on what is meant by “reasonable” in this context. In *Steven Price v HMRC* [2011] UKFTT 624, the tax-payer had applied for a direction that HMRC issue a closure notice in relation to the enquiry they had opened into his personal tax return for the year ended 5 April 2006, on the basis that enquiry could be closed and an estimated assessment made. In refusing the application Judge Mosedale commented (at paragraph [10]) that:

“... 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 ... information notices seeking documents and information reasonably required for the purpose of checking a tax return”

50. The decision in *Price* has been cited with approval in other tribunal cases. While *Price* was concerned with the issuing of a closure notice, such notices are intimately linked with information notices and similar principles apply.

51. *Marilyn Phillipou v HMRC* [2017] UKFTT 20 (TC) was a case involving an appeal against two Schedule 36 notices. The sole issue on appeal was whether the information sought by those notices was reasonably required to check the appellant’s tax position. There Judge Popplewell said, of HMRC’s request for detailed information, that:

“[42] We can see that this is extremely frustrating for the appellant and her advisers. In their eyes she has recorded (wholly properly and accurately) her cash takings; deducted from them expenses which were wholly and exclusively incurred by her business; and has reported a profit which she has signed off as being true and

accurate. She should not, therefore, be put to any further trouble over and above providing the business records, as she has done.

[43] But HMRC see it differently (and is entitled to do so). In its eyes the appellant's assertions that she has properly recorded her takings; the business records are accurate; and that the expenses are properly deductible is something which HMRC are not obliged to take at face value. It is entitled to test them."

52. *HMRC v Ingenious Games LLP & Ors* [2014] UKUT 62 was a case before the Upper Tribunal and concerned proper disclosure at the First-tier Tribunal. There, Mr Justice Sales said (at paragraph [67]):

"In my judgment, the most important point on the present interlocutory appeal is that in order for the main appeal to be determined fairly and justly, in accordance with the overriding objective, HMRC should have an equal opportunity to review the further relevant documents held by ITP, IFP2 and Ingenious Games which they have not yet disclosed to HMRC and which they do not wish themselves to rely upon in the appeal. Put another way, it would be unfair and unjust for ITP, IFP2 and Ingenious Games to be able to suppress or keep from the view of HMRC and the FtT relevant documents which may be harmful to their case, as a consequence of the limitation on the extent of HMRC's inspection of documents during the investigatory stage as a result of a sensible co-operative approach to the conduct of the investigation which was agreed as being in the interests of both sides."

53. HMRC submit two general underlying statements are evident from the above cases:

(1) The provision of information is of utmost importance to HMRC. They are entitled to know the full facts relating to a person's tax position in order to make an informed decision. To this end the statutory scheme and indeed the tribunal's approach to discovery entitles HMRC to full disclosure allowing them as good a view of matters as the tax-payer and their advisers have.

(2) HMRC are not obliged to accept uncritically that all information has been provided to them or that the information provided to them is accurate. HMRC are entitled to test that information so that they can determine, as in the present case, whether the appellant facilitates a tax avoidance scheme.

54. In the present case, further information is required in order for HMRC to understand and know the full facts relating to the nature of the fees Jupiter receives from IFL and those that it pays to Mete, the nature of the business services provided to IFL and received from Mete and any supporting contracts between these entities. This information is required by HMRC in order to check the accuracy of Jupiter's sales, turnover and deductions figures in the accounts for the relevant periods.

55. Accordingly, items 9) to 16) on the information notice are reasonably required by HMRC for the purpose of checking Jupiter's tax position.

Discussion

56. Jupiter appeals items 9 to 16 of the Schedule 36 notice on the grounds that these items are not necessary for checking the accuracy and completeness of the relevant Corporation Tax return and the reasons provided by HMRC are either spurious or not provided for in Schedule 36 Finance Act 2008 legislation. We do not agree.

57. The test of whether information and documents are reasonably required is clearly an objective test, and the request for information as set out in items 9-16 is in our view reasonable. The information sought by the notices relate to the enquiry into the appellant's 2014-15 and 2015-16 CT tax returns. HMRC are entitled to check how the Company operates, who the Company customers are, the nature of the services provided and what involvement it has with other entities both on and off-shore.

58. The accounts, returns and documentation so far provided by Jupiter do not answer HMRC's questions. HMRC has to be able to make an informed decision whether the appellant Company's returns are correct. Without that information, HMRC cannot frame the closure notice in order to make it as reasonably helpful to the taxpayer as is possible or appropriate in the circumstances.

59. The definition of 'tax position' in paragraph 64(1) of Schedule 36 is 'a person's position regarding any tax'. It is in both HMRC's and the Company's interests for the issues and any closure notice to be as specific and narrowed as reasonably appropriate. Of necessity Schedule 36 gives HMRC very wide powers.

60. The information and documentation requested in items 9 – 16 of the Information Notice clearly give HMRC a better understanding of the nature of the Company's activities and its connection to IFL and Mete, allowing HMRC to determine whether Jupiter is an umbrella company, acting as a conduit via which monies are channelled between an individual contractor and an end-user, the sole purpose of which involves artificially contrived arrangements to facilitate a tax avoidance scheme.

61. HMRC have virtually no knowledge of the nature and scale of Jupiter's business activities. The only information they have is contained in the accounts and tax returns. In 2014-15 the accounts show 'sales' of £4,688,902 and the same figure is given for purchases. CT is declared as £0. In the following year the position is very similar showing 'sales' at £4,166,099 and the same figure is given for 'purchases'. CT is again declared as £0. HMRC would understandably like a fuller explanation of how sales and purchases are realised, in order to check the information submitted by Company and determine whether its self-assessments are correct.

62. We do not accept the appellant's grounds of appeal. We are satisfied on the facts that HMRC were justified in issuing the Information Notice and that the appellant had

the burden of showing that it was not reasonable for HMRC to require the information/documents referred to in the Notice. The appellant has not discharged that burden. The documentation/information requested is in our view genuinely directed for the purpose of which the Notice may be given, namely to secure the production of documents/information reasonably required for carrying out an investigation or enquiry into the Company's tax position.

63. For the reasons given above we therefore confirm the Notices and the requirements set out in the Schedule to the Notices.

64. The appeal is accordingly dismissed.

65. Paragraph 32(4) Schedule 36 makes provision for the tribunal to specify a period for compliance with the Notice. If not already provided (following our decision given on the day of the hearing) Jupiter should provide the information required by the Notice within 30 days from the date of release of this decision.

66. This document contains full findings of fact and reasons for the decision. There is no right of appeal in respect of this decision as stated in paragraph 32(5) Schedule 36 Finance Act 2008.

MICHAEL CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 25 JULY 2019