



Neutral Citation: [2025] UKFTT 00069 (TC)

Case Number: TC09414

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[By remote video hearing]

Appeal reference: TC/2024/01408

PAYE – employer’s appeal against a Schedule 36 Finance Act 2008 information notice – whether paragraph 21(2) applies – no – whether the requested documents are statutory documents and/or reasonably required – yes – appeal dismissed.

Heard on: 27 November 2024
Judgment date: 22 January 2025

Before

**TRIBUNAL JUDGE MICHAELA SNELDERS
LESLIE HOWARD**

Between

AAA ORIENTAL LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: David Bedenham, counsel

For the Respondents: Megan Peacock, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was video using the Teams video platform. A face to face hearing was not held because it was more expedient to use the video platform. The documents to which we were referred are in a hearing bundle of 320 pages, the Appellant's skeleton argument of 6 pages and the Respondents Statement of Reasons of 9 pages.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. This is an appeal against a taxpayer notice issued by the Respondents to the Appellant on 5 October 2023 ("the October 2023 taxpayer notice") pursuant to Paragraph 1 of Schedule 36 to the Finance Act 2008 ("Schedule 36") requiring the Appellant to provide the Respondents with certain listed information and documents.

4. The grounds of appeal as set out in the Appellant's appeal to this Tribunal are:

(a) Paragraph 21(2) of Schedule 36 applies and none of the conditions in paragraph 21(4)-(8A) are satisfied. In particular, whereas the review decision relies on "condition c", HMRC have not demonstrated that the requested information/documentation is required for the checking of the Appellant's position in relation to other taxes.

(b) Further or alternatively, the requested information/documentation or some of it does not constitute statutory records (not being records that the Appellant is, by statutory provision, required to keep).

(c) Further, the information/documentation is not reasonably required by the requesting officer for the purpose of checking the Appellant's tax position.

5. All references to paragraphs in this decision are to paragraphs of Schedule 36 unless otherwise stated.

BACKGROUND AND FACTS

6. By letter dated 8 March 2023 the Respondents notified the Appellant that it had been selected by HMRC to check its business records for the period 7 March 2022 to 8 March 2023 to make sure that it is meeting its tax obligations as an employer.

7. Shreem Accountants Limited (the Accountant) responded on behalf of the Appellant on 6 April 2023 by email attaching the requested documents.

8. The Respondents then wrote to the Accountant by email on 12 April 2023 requesting a telephone interview with the Appellant.

9. The Accountant provided the Respondents with further information/documents on 17 April 2023.

10. The Respondents replied on 19 April 2023 requesting a further breakdown for various nominal codes by 3 May 2023, which the Accountant provided on 4 May 2023.

11. The Respondents had a telephone meeting with the director of the Appellant, Ajay Sandhu, and director of the Accountant, Binesh Kharel on 25 May 2023.

12. The Respondents then wrote to the Accountant on 1 June 2023 with draft minutes of the meeting for the Appellant's review together with a request for further documents to be provided by 15 June 2023.
13. These documents were provided by email on 12 June 2023. On 11 July 2023 the Respondents replied requesting a visit to the Appellant's premises and enclosing an analysis of bank statements to be discussed.
14. That visit took place on 10 August 2023, following which the Respondents wrote to the Accountant on 16 August 2023 requesting further documents by 30 August 2023.
15. The Respondents wrote again on 5 September 2023 requesting further records and allowing until 18 September 2023 for all the outstanding documents and information to be provided.
16. Rainer Hughes law firm (the Solicitor) responded to that email on 18 September 2023 informing the Respondents that they were now instructed by the Appellant and requesting an extension until 25 September 2023 to respond.
17. On 25 September 2023 the Solicitor wrote to the Respondents stating that the Appellant disputes that the items requested are statutory records or reasonably required by the Respondents to check the Appellant's tax position.
18. The Respondents replied on 26 September 2023 stating that all the records requested are statutory records "as they will be used to work out gross pay, pay for tax and National Insurance purposes, and net pay together with recording benefits and expenses" and requested a response by 3 October 2023. The Respondents also provided a link to an HMRC internal manual CH21700 - Information & Inspection Powers: Conditions and safeguards: What we can require or inspect: Statutory records
19. The Solicitor replied on 2 October 2023 asking for an explanation as to why each document is needed for the purpose of the investigation.
20. The Respondents issued the Appellant with the October 2023 taxpayer notice on 5 October 2023 and provided an explanation of why each item was needed. They requested the items by 4 November 2023.
21. The Appellant appealed the Schedule 36 Notice by email dated 2 November 2023 on the grounds that the information and documents requested are not statutory records and are not reasonably required to consider the Appellant's tax position.
22. The Respondents replied on 7 November 2023 providing a further explanation of why the requested information and documents are statutory records.
23. The Solicitor responded on 20 November 2023 repeating that the requested records are not statutory records and asking for a review.
24. The Respondents replied with a View of the Matter Letter on 5 December 2023 confirming that the requested records are both statutory and reasonably required for the purpose of checking "that all payments made by the company are for genuine business reasons and have been dealt with correctly for tax and national insurance purposes". This letter also informed the Appellant that the matter would be passed on for a review as requested.
25. On 18 January 2024 the Respondents issued a Review Conclusion Letter upholding the decision. This letter introduced the application of paragraph 21 of Schedule 36, concluding that

“As Officer Awan open a compliance check into the business, paragraph 21(3) applies and Condition C is met.”

26. This Review Conclusion Letter also stated that all but the records listed at 4, 7 and 10 of the October 2023 taxpayer notice were statutory records and all the requested records were reasonably required to check the Appellant’s tax position.

27. The Appellant then submitted their notice of appeal to the Tribunal on 30 January 2024.

DISCUSSION

28. Paragraph 1 of Schedule 36 gives an officer of Revenue and Customs the power to require a person to provide information and documents as follows:

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

(a) to provide information, or

(b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position or for the purpose of collecting a tax debt of the taxpayer.

(2) In this Schedule, “taxpayer notice” means a notice under this paragraph.

29. Paragraph 21(2) of Schedule 36 sets out circumstances in which an officer of Revenue and Customs may not issue a taxpayer notice as follows:

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

30. However even where the conditions in paragraph 21(2) are met paragraph 21(3) provides that paragraph 21(2) will not apply to prevent the taxpayer notice being issued as follows:

(3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to E is met.

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

(a) the return, or

(b) a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”), and the enquiry has not been completed so far as relating to the matters to which the taxpayer notice relates.

(5) In sub-paragraph (4), “notice of enquiry” means a notice under–

(a) section 9A or 12AC of, or paragraph 5 of Schedule 1A to, TMA 1970, or

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

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

(a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,

(b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or

(c) relief from relevant tax given for the chargeable period may be or have become excessive.

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

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

(8A) Condition E is that the notice is given for the purpose of obtaining any specified relevant transfer pricing information or documents.

(8B) For the purposes of Condition E, information or documents are "specified relevant transfer pricing information or documents" if—

(a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and (b) the relevant person is required to keep and preserve those records under either or both of those provisions.

(8C) For the purposes of subsection (8B), the "relevant person" means—

(a) in the case of a tax return made in respect of a chargeable period under section 8A or 12AA of TMA 1970 (trustee's and partnership returns) —

(i) the person, or

(ii) a person who was required by a notice under the section concerned to make and deliver the return;

(b) in any other case, the person.

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

31. The Appellant's first ground of appeal is that paragraph 21 applies and none of the exceptions in paragraph 21(4) – (8A) are satisfied so the Respondents are prevented from issuing the taxpayer notice to the Appellant.

Burden of Proof in relation to Paragraph 21

32. Counsel for the Appellant directed the Tribunal to paragraph 15 of *Metropolitan International Schools Ltd v HMRC* [2021] UKFTT ("MIS") in relation to who has the burden of proof to establish whether paragraph 21(2) does or does not apply. Paragraphs 14 and 15 of that decision read as follows:

"(14) Each of Para 21(1) and (2) sets out an exception to Para 1. As the burden is on HMRC to satisfy the Tribunal that Para 1 is satisfied, it is for the taxpayer to demonstrate that one of the exceptions is met and that the notice may not be issued.

(15) Further as Para 21(3) indicates that there are exceptions to the Para 21(1) and (2) exceptions and as the burden rests with the taxpayer to satisfy the Tribunal why Para 21(1) and (2) should apply to prevent the notice from

being issued, it is for HMRC to demonstrate that one or more of the exceptions referred to in Para 21(3) are satisfied and that the notices may be issued.”

33. The Respondents did not make any representations as to who has the burden of proof in relation to paragraph 21.

34. We agree with the FTT in MIS that the Appellant has the burden of proving that paragraph 21(2) applies in the first instance. If paragraph 21(2) does apply then the burden moves to HMRC to prove that one of the conditions A – E in sub-paragraphs (4) to (8A) is met so that sub-paragraph (3) disapplies sub-paragraph (2).

35. The standard of proof at each stage is on a balance of probabilities.

Paragraph 21(2)

36. In order for sub-paragraph 21(2) to apply the following conditions must be met.

(1) the Appellant must have made a company tax return or returns for a chargeable period or periods that are covered by the October 2023 taxpayer notice; and

(2) the purpose of the October 2023 taxpayer notice must be to check the Appellant’s corporation tax position.

Company tax return for chargeable period covered by the October 2023 taxpayer notice

37. The October 2023 taxpayer notice requests information and documents for the period 7 March 2022 to 8 March 2023. We were not provided with a copy of the relevant company tax return or returns, nor any information as to the chargeable period or periods covered by those tax returns and whether the returns relate to the same period as is covered by the October 2023 taxpayer notice.

38. Counsel for the Appellant stated in his oral submissions that it is not in dispute that the Appellant made a company tax return.

39. The Respondents did not challenge this assertion nor did they make any submissions or provide any evidence that the company returns made did not cover the same period as that for which documents were requested in the October 2023 taxpayer notice.

40. We therefore find that on a balance of probabilities the Appellant had made a company tax return or returns covering the same period as that covered by the October 2023 taxpayer notice.

Purpose of the October 2023 taxpayer notice

41. Moving then to the second condition in paragraph 21(2) and the purpose of the October 2023 taxpayer notice. The burden is on the Appellant to prove that the purpose was to check the Appellant’s corporation tax position.

42. Counsel for the Appellant submitted that:

(1) All the information and documents requested by HMRC in the October 2023 taxpayer notice look like they relate to a corporation tax enquiry; and

(2) it is very difficult to understand how each of the documents requested is needed for employer tax purposes without further explanation from the HMRC officer who requested them.

43. The Respondents did not provide witness evidence to counter these assertions, relying instead on the correspondence between the parties provided in the hearing bundle.

44. This correspondence shows that the Respondents issued the October 2023 taxpayer notice to the Appellant because the Appellant refused to provide the documents requested as part of the employer compliance check that began on 8 March 2023.

45. The 8 March 2023 letter requested that the Appellant provide the following documentation by 7 April 2023:

“ Please send me all records that show how you:

- work out gross pay, pay for tax and National Insurance purposes, and net pay
- provide and record benefits and expenses to your employees
- work out, record and fund statutory payments
- work out and recover any Student Loan deductions

In addition, please send me the nominal accounts for the period shown above.”

46. The email dated 5 October 2023 accompanying the October 2023 taxpayer notice explains the reason why each of the items requested in the October 2023 taxpayer notice is needed as follows:

(1) Mileage records for Mr Rashpal Sandhu for the period 1 November 2022 to 31 January 2023.

“A review of these records is required to ensure that any reimbursement is for expenses that were “wholly, exclusively and necessarily” incurred in the performance of the duties of employment.”

(2) Directors Loan Accounts for Mr Rashpal Sandhu and Mr Ajay Sandhu in chronological order for the period 7 March 2022 to 8 March 2023.

“A review of the credit and debit entries is required to check correct balances have been established.”

(3) Invoices for the payments made to Samindha Sandhu end of each month for the period 7 March 2022 to 8 March 2023.

“A review is required to establish payments are genuine business expenditure.”

(4) The date the medical insurance policy reported on 2022/23 P11d commenced and a copy of the supporting policy documents. If this policy superseded a previous one what date did that one commence and provide supporting policy documents.

“These records are required to enable me to establish the end of year forms have been accurately reported.”

(5) All Invoices for the payments made to Gita and Daniel Parrott for the period 7 March 2022 to 8 March 2023.

“A review is required to establish payments are genuine business expenditure.”

(6) Fuel card statements for all providers for the period 7 March 2022 to 8 March 2023.

“ A review of these records is required to ensure that any payment made by the company for fuel costs were “wholly, exclusively and necessarily” incurred in the performance of the duties of employment.”

(7) All invoices/receipts to support the purchases listed on the attached analysis for American Express and Capital One together with detailed explanation for each transaction.

“A review of these records is required to ensure that any payments for any goods or services using the company credit card were solely for the purpose of the business.”

(8) All invoices/receipts to support the purchases recorded under nominal codes 31404 and 31405 together with a detailed explanation of each transaction.

“A review of the business entertainment undertaken is required.”

(9) Invoice No 108784 dated 5 September 2022 from a nominal 31403.

“I need this so I can check for the expenditure by the business.”

(10) A list of diary records and who was both invited and attended each event. Also what cost was attributed to each event for the period 1 November 2022 to 31 January 2023.

“A review of these records is required to consider whether the events and costs per head incurred are within the limits provided by HMRC for taxable purposes.”

47. In an email of 7 November 2023 the Respondents provide a further explanation as follows:

“We have looked back at what has been sent, none of the nominal ledgers contain the reasons for the business expense, and it is this aspect we need to ensure none of the items paid by the company are of personal nature or should have been included in the payroll records. To do this we need full explanation of what items have been purchased, who attended any social events, the customers involved in any business event and the reason for any payment made to any individual not on payroll.”

48. The Respondents letter of 5 December 2023 provides further clarification as follows:

“Company funds have been spent therefore we are checking that they are legitimate expenses or that they have been dealt with correctly for tax and NIC purposes and the relevant returns have been made.

An information notice was issued dated 05 October 2023, which referred you to the legislation under Paragraph 1 of Schedule 36 to the Finance Act 2008. It legally requires you to give me the information or documents I asked you for.

....

To confirm, I consider that everything I have asked for is reasonably required to establish that all payments made by the company are for genuine business reasons and have been dealt with correctly for tax and national insurance purposes.”

49. The Review Conclusion Letter dated 18 January 2023 states

“In Officer Awan’s email of 26 September 2023 to your agent, he advised that the requested documents were all statutory as they would be used to work out gross pay, pay for tax and National Insurance Purposes, and net pay together with recording of benefits and expenses.”

50. Part 5 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) sets out the deductions that employers are allowed to make to calculate the net taxable earnings from

which employers must deduct tax pursuant to the Income Tax (Pay As You Earn) Regulations 2003 (“the PAYE Regulations”). Section 336 of ITEPA sets out the general rule that an employer is allowed to deduct expenses from an employee’s earnings provided that the employee is obliged to incur and pay those expenses as holder of the employment and that the amount is incurred “wholly, exclusively and necessarily” in the performance of the duties of the employment. Other sections within Part 5 of ITEPA then go on to provide specific rules for particular types of expenses such as travel and business entertainment expenses.

51. An employer is also required pursuant to regulations 85-96 of the PAYE Regulations to complete and submit a P11D form to HMRC including all the benefits and expenses paid to or on behalf of employees that are not accounted for through its PAYE returns to HMRC, including beneficial employment related loans and any other employee benefits provided, such as medical insurance.

52. The correspondence from HMRC to the Appellant clearly states that the purpose of the October 2023 taxpayer notice is to check the Appellant’s PAYE tax and National Insurance Contributions (“NICs”) position and the context of the legislative framework governing employer’s PAYE and NICs responsibilities makes it clear why the requested documents are needed for this purpose.

53. While we accept that some of the requested records could also have an impact on the Appellant’s corporation tax position, this is not sufficient to persuade us that the purpose of the October 2023 taxpayer notice is, contrary to all the explanations in the Respondents’ correspondence, to check the Appellant’s corporation tax position.

54. It follows that the Appellant has not met the burden of proving that, on a balance of probabilities, the purpose of the October 2023 taxpayer notice is to check the Appellant’s corporation tax position and paragraph 21(2) does not therefore apply to prevent the Respondents from issuing it.

Paragraph 21(3)

55. As paragraph 21(2) does not apply it is not necessary for us to go on to consider whether any of the conditions A to E applies so that sub-paragraph (3) disapplies sub-paragraph (2). However, as both parties made submissions on this issue, we will address it for completeness.

56. If paragraph 21(2) had applied, the burden would then move to the Respondents to prove that on a balance of probabilities one of the conditions A to E applies.

57. The Respondents’ position as set out in their Review Conclusion letter dated 18 January 2024 is that

“As Officer Awan opened a compliance check into the business, paragraph 21(3) applies, and Condition C is met.”

58. Condition C is set out in sub-paragraph (7) as follows:

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

59. It follows that where the purpose of obtaining the documents in a taxpayer notice is to check the taxpayer’s corporation tax position, but those documents are *also* required for the purpose of checking the taxpayer’s position as regards any tax other than income tax, capital gains tax or corporation tax, condition C will be met.

60. The Respondents expanded on their position on condition C in their Statement of Reasons as follows:

“33. The Respondents provided a letter on 5 December 2023 which explained to the Appellant that, “company funds have been spent therefore we are checking that they are legitimate expenses or that they have been dealt with correctly for tax and National Insurance Contribution purposes and the relevant returns have been made.

34. A further letter was issued to the Appellant on 18 January 2024 following an independent review which stated, “the requested documents were all statutory as they would be used to work out gross pay, pay for National Insurance Purposes, and net pay together with recording benefits and expenses.”

35. National Insurance Contributions are a different tax to income tax, capital gains tax or corporation tax. The Respondents therefore submit that the above explanations satisfy Condition C of Paragraph 21, Schedule 36. FA 2008.”

61. At the hearing the Tribunal alerted the Respondents to the definition of “tax” in paragraph 63 which does not include NICs.

62. The Respondents submitted that NICs should be treated as a tax for the purpose of condition C, notwithstanding the definition in paragraph 63, because NICs are under an umbrella with income tax. After a short adjournment, the Respondents also produced two documents from the House of Commons library to support their contention that it was Parliament’s intention that NICs should come within the definition of tax for the purpose of Schedule 36, and more specifically the reference to tax in Condition C.

63. The House of Commons library documents to which the Tribunal was referred were a Briefing Paper dated 17 July 2017 entitled “National Insurance Contributions (NICs): an introduction” (the 2017 document) and a Research Briefing dated 18 November 2024 entitled “National Insurance contributions; An introduction” (the 2024 document).

64. We were referred to:

(1) the Summary at page 5 of the 2024 document which states “National Insurance Contributions (NICs) are a direct tax”; and

(2) the introduction at page 5 of the 2017 document which states “Several tax measures were introduced, by far the most important of which were increases in the rates of NICs from April 2003.”

65. These documents do not assist the Respondents in their submission that NICs is “another tax” for the purpose of condition C for the following reasons:

(1) We can only consider Parliamentary material as an aid to statutory interpretation where the legislative wording is ambiguous, obscure or would lead to an absurdity (*Pepper (Inspector of Taxes) v Hart* [1993] A.C. 593 (*Pepper v Hart*)). The wording in paragraph 63 is unambiguous and does not lead to any absurdities so there is no need to look to Parliamentary material to understand it and the Tribunal is therefore not permitted to do so.

(2) Even if the conditions in *Pepper v Hart* were met, House of Commons library briefing papers are not the type of Parliamentary material that we can refer to as an aid to statutory interpretation.

(3) Parliamentary material produced many years after the legislation under consideration was enacted could never assist in discerning the Parliamentary intention in enacting any provision in that legislation.

66. It follows therefore that if paragraph 21(2) did apply then the Respondents could not rely on Condition C to disapply it on the grounds that the purpose of the request was also to check the Appellant's NICs position.

67. The Respondents did not submit that any of the other conditions A to E in paragraph 21 were met but given the correspondence from HMRC to the Appellant and our findings above that the purpose of the October 2023 taxpayer notice was to check the Appellant's PAYE tax position we would have had no difficulty finding that Condition D applied.

68. Condition D is set out in sub-paragraph (8) as follows:

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

Right to appeal against taxpayer notice

69. The Appellant's second ground of appeal is that the documents and information required, or some of them are not statutory records.

70. Paragraph 29 of Schedule 36 provides as follows:

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

(2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records.

71. The Appellant can therefore appeal against the taxpayer notice as a whole irrespective of whether the documents and information requested are statutory records, for example pursuant to paragraph 21(2) as above, but can only appeal against any requirement in the notice, if it does not form part of the Appellant's statutory records.

72. On this analysis a taxpayer cannot appeal against a requirement in a taxpayer notice to produce statutory records on the basis that the statutory records requested are not reasonably required for the purpose of checking the taxpayer's tax position and therefore don't meet the condition set out in paragraph 1(1).

73. The logic of this analysis is clearly set out in the decision in *Carol Holmes and Andrew Knight v HMRC* [2018] UKFTT 0678 (TC) (*Holmes & Knight*) at paragraph 13 as follows;

“Once it is accepted that a document is a statutory record, Schedule 36 provides no right of appeal against an information notice requiring production of that document. The reason for that is clear. If a taxpayer is legally required by the Taxes Acts to keep and preserve a document, there is no reason for the taxpayer to resist production of the document to HMRC. In those circumstances HMRC are entitled to production of the document as a matter of course. They are not required to justify to a tribunal that the document is reasonably required in order to check the taxpayer's tax position. The nature of the document, as one that is required to enable the taxpayer to make a correct and complete return, leads to what is in effect an irrebuttable presumption, at least as far as the tribunal is concerned, that it is

reasonably required for the purposes of checking the taxpayer's tax position."

74. The decision in *MIS* however takes a different approach, finding that it is still necessary to meet the "reasonably required" condition even in relation to statutory records. It states at paragraph 21 of the decision:

"It seems to us the legislation is clear, HMRC may only obtain documents requested in a taxpayer notice if the notice satisfies the requirements in Para 1 and they are reasonably required. To be reasonably required the Statutory Records requested must be relevant to the issues that have prompted the enquiry and be capable of enabling the officer to check the tax position. We consider that a request may be unreasonable where for example all the Statutory Records relating to all employees of the company are being requested to verify the position of a single employee, or where all the Statutory Records are being demanded but the issue under consideration is only one aspect of the corporation tax return or VAT return."

75. The language of paragraph 1(1) does make it a pre-condition of HMRC requiring the documents or information in the notice, that they are reasonably required and paragraph 29(2) does not explicitly state that this pre-condition does not apply where the records requested are statutory records. However to interpret paragraph 1(1) as meaning that even statutory records must be reasonably required in order to be included in a taxpayer notice, notwithstanding paragraph 29(2), would effectively make paragraph 29(2) redundant, which cannot have been Parliament's intention.

76. While we accept therefore that the effect of paragraph 29(2) is not as clear as it could be, we prefer the logic set out in paragraph 13 of the *Holmes & Knight* decision and find that paragraph 29(2) prevents the Appellant from appealing against the production of any statutory records in the October 2023 taxpayer notice.

77. It is therefore necessary to establish whether the requested records are statutory records, before we can go on to consider the Appellant's third ground of appeal, that the documents are not reasonably required for the purpose of checking the Appellant's tax position.

Statutory records

78. It is for the Respondents to demonstrate that the information and documents required to be produced by the notice are statutory records.

79. Statutory records are defined in paragraph 62 of Schedule 36 as follows:

"For the purposes of this Schedule, information or a document forms part of a person's statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—

- (a) the Taxes Acts, or
- (b) any other enactment relating to a tax..."

80. We agree with Judge Redston at paragraph 54 of her decision in the case of *Gold Nuts and Ors v HMRC* [2017] UKFTT 354 (TC) (*Gold Nuts*) where she states:

"It follows from that definition that if a person is required by any statutory provision relating to a tax to keep and preserve information or a document, it is a "statutory record". In other words, there is no link between the tax which is under enquiry, and the source of the obligation to keep records."

81. Regulation 97(1) of the PAYE Regulations provides that

“An employer must keep and preserve for not less than three years after the end of the tax year to which they relate all PAYE records which are not required to be sent to HMRC by other provision in these Regulations.”

82. PAYE records is defined in regulation 97(3) as follows:

“*PAYE records*” means the following documents and records—

(a) all wages sheets, deductions working sheets, documents completed under regulation 46 (Form P46), information provided under regulation 40A(1) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D) and other documents and records relating to—

(i) the calculation of the PAYE income of the employees,

(ii) relevant payments to the employees, or

(iii) the deduction of tax from, or accounting for tax in respect of, such payments, and

(b) all documents relating to any information which an employer is required to provide to HMRC under regulation 85 (Form P11D).

83. Paragraph 21(1) of Schedule 18 to the Finance Act 1988 sets out the filing and record keeping obligations for companies in relation to corporation tax imposing a duty to “keep such records as are needed to enable it to deliver a correct and complete return for the period”. We agree with the comments made in *Couldwell Concrete Flooring v HMRC* [2015] 25 UKFTT 136 (Judge Cannan and Mr Robertson) on the scope of that sub-paragraph as follows:

“[23] in our view paragraph 21(1)(a) requires a company to keep all records which are necessary to establish, without doubt, that a return is accurate. That will include all documents and information necessary to establish the sales, purchases, assets and liabilities of the company in the relevant accounting period and at the end of the accounting period. The requirement that the return must be correct and complete implies a requirement that the documents and information to be kept must evidence that the return is correct and complete...”

[25] In our view it is plainly necessary for any company seeking to prepare a correct and complete tax return to have records of sales, purchases, receipts, payments, trade debtors and other debtors. If a business operates a bank account it will need to keep a record of transactions on the account and of the balance on the account at any particular time to ensure that receipts and expenditure have been properly recorded. Not just in the company's accounting records but also that the transactions and balance on the account have been properly recorded by the bank.”

84. Paragraph 59 of *Gold Nuts* further provides;

“Statutory records also include an analysis of any loan and/or current accounts between any of the directors and the company, including the opening and closing balances and details of any credits to those accounts, supported by documentary evidence. This is because amounts owed to and from directors are included in the books and records of the company: in other words, the directors are debtors and/or creditors of the company.”

85. The company must keep its corporation tax records for 6 years from the end of the period or, if later, until the end of an enquiry into the return (paragraph 21(2) – (5) of Schedule 18 to the Finance Act 1988).

86. The period of time covered by the October 2023 taxpayer notice is March 2022 to March 2023. The Appellant is required to still hold its corporation tax and PAYE records for this period and they therefore remain statutory records.

87. In their Review Conclusion Letter dated 18 January 2023 the Respondents summarise the above as follows:

“Statutory records are documents or records that a person is required to keep by the Taxes Act or other legislation relating to the taxes. They are the records needed to enable a person to make a complete and accurate return, declaration or claim and HMRC to check it.”

88. This letter then goes on to say that documents 1-3, 5-6 and 8-9 are statutory records. However it does not provide any explanation as to why these documents are statutory records and why documents 4, 7 and 10 are not.

89. The Respondents statement of reasons asserts that all the records requested are statutory records.

90. The Appellant has not provided any reasons why they consider that the records requested in the October 2023 taxpayer notice are not statutory records.

91. The reasons given by HMRC as to why they require each of the documents listed in the October 2023 taxpayer notice is set out in paragraph 46 above. As we have found that the purpose of all these documents is to check that the Appellant has properly calculated its employees’ PAYE income and that it has deducted and accounted for tax correctly in respect of that income as well as completed its P11Ds correctly, it follows that these documents are PAYE records and therefore statutory records. To the extent that the requested records are not “PAYE records” because for example it transpires that the invoices requested at (3), (5), (8) and (9) are not personal in nature and so do not impact on any of the employee’s PAYE income, they will be required for the Appellant to accurately complete its corporation tax return and remain therefore statutory records.

REASONABLY REQUIRED

92. The Appellant’s third ground of appeal is as follows:

Further, the information/documentation is not reasonably required by the requesting officer for the purpose of checking the Appellant’s tax position.

93. As we have found that all of the documents are statutory records, pursuant to paragraph 29(2) there is no right of appeal against a requirement to produce any of these documents.

94. Even if that were not the case, we find that all the records requested are necessary for the purpose of checking that the Appellant has complied with all its obligations under the PAYE regulations.

95. A persons “tax position” is defined for the purpose of Schedule 36 in paragraph 64(2) as including;

“where appropriate, a reference to the person's position as regards any deductions or repayments of tax, or of sums representing tax, that the person is required to make—

(a) under PAYE regulations,”

It follows that all the statutory records requested in the October 2023 taxpayer notice are also reasonably required for the purpose of checking the Appellant’s tax position.

CONCLUSION

96. Paragraph 21(2) does not apply because the purpose of the October 2023 taxpayer notice is not to check the Appellant's corporation tax position.

97. All the documents and information requested in the October 2023 taxpayer notice are statutory records and pursuant to paragraph 29(2) the Appellant has no right to appeal against a request to produce statutory records.

98. For all the reasons set out above the appeal is dismissed.

99. We direct that the Appellant must provide the records requested in the October 2023 taxpayer notice within 30 days of the date of the release of this decision.

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

101. Pursuant to Paragraph 32(5), there is no right of appeal against this decision.

Release date: 22nd JANUARY 2025