



**TC06014**

**Appeal number: TC/2016/4333  
TC/2016/6550**

*ENQUIRIES AND INFORMATION NOTICE – whether valid – yes –  
appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CODEXE LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BARBARA MOSEDALE**

**Sitting in public at Taylor House, Rosebery Avenue, London on 12 July 2017**

**Mr K Koonjah, of Noviscom Ltd, for the Appellant**

**Ms H Jones, HMRC officer, for the Respondents**

## DECISION

1. On 20/7/16 the appellant applied for the enquiries opened by HMRC into its tax returns for periods ended 31 October 2013 and 31 December 2013 to be closed within 30 days, and appealed against the issue of an information notice served in respect of accounting period ended 31 October 2013. While the application and the appeal were assigned separate appeal numbers, the Tribunal directed that they be case managed and heard together.

2. Subsequently to the appeal, it appears that the appellant was issued with a penalty for non-compliance with the information notice: that has not yet been appealed to this Tribunal (although I am told it has lodged an appeal with HMRC). I will therefore only consider the closure application and the appeal against the information notice, although, obviously, if I upheld the appeal against the information notice, the penalty would fall away.

### **The evidence**

3. HMRC called as their witness Mr James Moss, who is the case lead officer on the corporation tax side for the affairs of what I shall refer to as the 'Gold Nuts' group. These are companies owned and controlled by two persons, Mr Buddhdeo and Mr Joshy Matthews, one of which is called Gold Nuts Limited.

4. Mr Moss was cross examined by Mr Koonjah but he was not really challenged on the evidence he had already given in chief save that it was put to him that his real purpose in instituting the enquiries into the appellant company was to gain information to prosecute Mr Buddhdeo. Mr Moss denied this: I accept that denial and indeed accept his evidence: his answers made sense and it was clearly no part of his role in the civil side of HMR to prosecute anyone.

5. My findings of fact are based on Mr Moss' evidence as he was the only witness and I accepted his evidence.

### **Findings of fact**

6. Mr Moss explained that there was an on-going enquiry into companies in the Gold Nuts group of which he was the lead on the corporation tax side, and as part of HMRC's risk assessment, he would consider the returns of any company with the same directors as the other gold nuts companies. For this reason, he considered the appellant's tax returns.

7. Mr Moss was not satisfied that the returns were accurate. He wanted more information to assess whether or not they were accurate. The returns showed a nil turnover but expenditure in the period to 31 October 2013 on property. He wanted to check the amount of the expenditure, the date of the expenditure and the purpose to which the property was put. He wanted to check the identity of the property: he wanted confirmation of its actual address.

8. Within a week of considering the returns, and within the one year time limit, Mr Moss opened enquiries into the returns for periods ended 31 October 2013 and 31 December 2013. While the purchase appeared from the returns to have been made in the first of these two periods, it had been a 14 month accounting period and, in order to protect HMRC's position, Mr Moss had simultaneously opened an enquiry into the second period in case any necessary amendments discovered to be required to the first tax return had a knock-on effect on the second tax return covering the same accounting period.

9. On the same day, but by a separate letter, Mr Moss issued an information notice under paragraph 1 of Schedule 36 of the Finance Act 2008. The notice asked for the following information:

- (a) The sales contract for the purchase of the property
- (b) The address of the property (unless apparent from the sales contract)
- (c) An explanation of the use to which the property was being put.

10. He explained that he sought this information in order to confirm whether the entries in the tax return to 31 October 2013 were correct: the sales contract ought to confirm the date and amount of the purchase; the other two items were to confirm the address and use of the property.

11. Mr Moss accepted that HMRC's normal practice is to ask a taxpayer informally for the required information before issuing a formal Sch 36 notice. He explained that he had not made an informal request in this case because informal requests (and indeed formal information notices) in respect of other Gold Nuts group companies had not been complied with and Mr Moss did not expect an informal request would meet with compliance from Codexe Ltd either.

12. New information was made available by Mr Koonjah at the hearing. In particular:

- (a) He confirmed the address of the property.
- (b) He produced land registry entries for the property
- (c) He produced an advertisement advertising the property as available for rent.

### **The application for closure**

13. Mr Koonjah was not particularly clear in his submissions as to whether they related to the application for closure or the appeal against the information notice. I will consider each of his grounds (in so far as relevant) in respect of both the application and the appeal.

## **The law on closure applications**

14. Paragraph 33 of Schedule 18 of the Finance Act 1998 provides that:

5 (1) The company may apply to the Tribunal for a direction that an officer of Revenue and Customs gives a closure notice within a specified period.

(2)....

(3) The tribunal shall give a direction unless satisfied that an officer of Revenue and Customs has reasonable grounds for not giving a closure notice within a specified period.

10 15. The burden is therefore on HMRC to satisfy this Tribunal that they have reasonable grounds for not closing the enquiries within 30 days or any other specified period. And to that end, as I have said, HMRC called a witness, Mr Moss, whose evidence I have discussed and accepted above.

## **Reason to suspect**

15 16. Mr Koonjah's submission was that HMRC had to have a reason to suspect under-declaration before they could open an enquiry. For this submission he relied on HMRC's manuals at CH2350: I was not entirely clear whether he was saying CH2350 reflected the law or was an obligation HMRC had imposed on themselves.

20 17. Either way he was wrong. The law does not require reason to suspect before an enquiry can be opened: there is no qualification in the legislation on HMRC's right to open an enquiry and no reason in logic why there should be such a qualification. As I have stated before, (*Spring Capital* [2015] UKFTT 8 (TC) at §34 and *Qualapharm* [2015] UKFTT 479 (TC) at §15-20) HMRC have the right to open enquiries at random. I noted in *Qualapharm* that my view was supported by the decision in  
25 *Bensoor v Devine* [2005] STC (SCD) 297 at §18.

18. And HMRC's policy does not require a reason to suspect either: CH2350 is dealing with when an information notice can be issued and in particular whether the condition in paragraph 21(6) of Sch 36 is met. It is not dealing with the opening of an enquiry. Even if it was, HMRC's policy does not make the law.

30 19. HMRC do not have to have a reason to suspect in order to open an enquiry: therefore, I do not need to determine whether they had such reason to suspect when they opened these enquiries. However, they must satisfy this Tribunal that there are reasonable grounds to continue the enquiry, and I deal with that below.

## **Enquiries must be justified**

35 20. It was also Mr Koonjah's case that HMRC were bound to take tax returns at face value and could not enquire into them unless they were able to, and did, justify the enquiry to the taxpayer.

21. I do not agree that that is a correct statement of the law. As I have just stated, HMRC do not need a reason to suspect underdeclaration before opening an enquiry. An enquiry can be opened at random. Moreover, HMRC in law do not need to give the taxpayer a reason for opening enquiries and would not even have to inform the taxpayer whether the enquiry was being opened randomly or otherwise.

22. Mr Koonjah's position was that, even if the legislation did not require HMRC to inform a taxpayer of the reason an enquiry was opened, this was an obligation HMRC had imposed on itself. He relied on Ch206150 'Openness and Early Dialogue' ('OED') which stated that the HMRC officer should inform the taxpayer the reason why the enquiry was opened and why the documents requested were required. Both parties were agreed that the letters opening the enquiries in this application did not do so (other than the uninformative statement the enquiries were being opened to check the returns).

23. The issue for this Tribunal is whether HMRC have satisfied me that there are reasonable grounds for not closing the enquiry. I can see that a failure by HMRC to comply with their own policy, whilst not being something over which the Tribunal ordinarily has jurisdiction (see *BT Pension Trustees* [2015] EWCA civ 713 §142-143), is a factor that a Tribunal could properly take into account when considering 'reasonable grounds'.

24. However, it is not a factor I find compelling in this case. Firstly, I do not think HMRC is in breach of its own policy. On its face, the OED only applies to local compliance officers, and Mr Moss did not appear to be a local compliance officer. OED only suggests other branches of HMRC might use it: 'Caseworkers in other business areas may also wish to apply these principles'. Even where an enquiry is opened by local compliance, the policy is not absolute in any event as it says: 'There may also be occasions where OED will not be appropriate.'

25. Secondly, even if there was a breach of policy, it is clearly rectified by the need in defending a closure application for HMRC to justify keeping the enquiry open: if they cannot justify keeping it open, it must be closed. So if the enquiry is not closed, the taxpayer will at that point know the reasons why it is kept alive.

26. However, while the failure to give reasons does not invalidate the opening of the enquiry, it is clear that the burden of justifying continuing the enquiry is on HMRC: paragraph 33(3) of Sch 18 FA 98. It would be difficult, perhaps impossible, for HMRC to satisfy a Tribunal that they had reasonable grounds for keeping an enquiry open without to some extent explaining the purpose of the enquiry. So while a failure to explain the purpose of the enquiry to the taxpayer does not invalidate it, the taxpayer can challenge the enquiry, as the appellant has done in this case, by applying for it to be closed, and at that stage the purpose of the enquiry is almost certainly going to have to be explained by HMRC.

27. And HMRC has, in response to the closure application, explained its enquiry in this case. I consider this below at §§31-37.

### **Linked enquiries and right not to self-incriminate**

28. Mr Koonjah stated that it was the appellant's belief that this enquiry was opened because HMRC were enquiring into the tax affairs of Mr Budhdeo, one of the company's directors. He believed the purpose of the enquiry was to gather  
5 information to prosecute Mr Budhdeo. He also believed that the company was entitled to refuse to cooperate with the enquiry or provide information in reliance on Mr Budhdeo's right not to self-incriminate.

29. HMRC accepted that the enquiries were linked. I accept Mr Moss' evidence that they were linked. However, I accept that they were linked in the sense that  
10 HMRC considered that companies of which Mr Budhdeo was a director were a possible risk of under-declarations of tax liability so to that end had considered whether it was appropriate to open an enquiry into this appellant's tax returns. As Mr Moss had decided that he was not satisfied that the company's tax return was necessarily complete and accurate, he had opened the enquiries, centring on the  
15 property purchase with which he had concerns. I accept Mr Moss' evidence, as I have said, that the enquiry into Codexe was not opened to obtain information on other taxpayers nor to prosecute Mr Budhdeo.

30. Mr Koonjah is wrong to state that Mr Budhdeo's right not to self-incriminate prevents an enquiry being opened into the tax returns of a company of which he is a  
20 director or that it prevents information being sought under an information notice. The right not to self-incriminate is a right for a person not to answer questions: it is a right they do not have to exercise, and it is a right which, if they do exercise, does not prevent the drawing of adverse inferences. But it is a right no one else can rely on. The *company* cannot rely on *Mr Budhdeo's* right not to self-incriminate. Put another  
25 way, no one (save a spouse) has the right to refuse to answer questions because it might incriminate someone else. (And if Mr Koonjah was right on this, it would prevent any investigation of crime, let alone any civil tax investigation, as anyone could refuse to provide evidence on the basis it might incriminate someone else!)

### **Information already known to HMRC?**

31. Mr Koonjah submitted that the enquiry should be closed because HMRC now  
30 knew everything which they sought to know in the enquiry. HMRC had access to its own VAT file on the company and Mr Koonjah had in the hearing confirmed the address of the property and provided the land registry extract and an advertisement relating to it (see §12).

32. Ms Jones in submissions, and Mr Moss in evidence, accepted that HMRC had  
35 access to their own VAT file on the appellant company. Before the hearing, they had not known whether the property on which the appellant sought to make a VAT option to tax was the same property as shown in the company accounts. They now knew that it was. But in any event, Mr Moss's evidence, which I accept, was that the VAT file  
40 did not answer the question of what the property was actually used for and in any event did not give independent verification of any information (eg as to purchase price) as it was based on answers from the appellant. Moreover, the declared price paid did not match the accounts and tax return.

33. Mr Koonjah also suggested that HMRC should be taken to know the information held at the land registry, as HMRC could have undertaken a search. I do not agree that HMRC must be taken to know information that they do not hold but might be able to obtain from a search: in any event, it was not possible for HMRC to undertake a search until after the hearing because it was only at the hearing that the address of the property was confirmed.

34. In any event, the information from the land registry did not answer all Mr Moss' questions. That information confirmed the information on VAT file that the purchase took place on 7 November 2013 and therefore suggested that the purchase had been declared in the wrong tax return.

35. Mr Koonjah also suggested that HMRC must be taken to have known that the property was empty and being advertised for letting because a search of the internet would have revealed the letting particulars, a copy of which he produced. I do not agree. I do not agree that HMRC must be taken to know information that they do not hold but might be able to obtain from a general search of the internet: in any event, HMRC were unable to undertake such a search without having the address of the property confirmed. Lastly, I entirely agree with Mr Moss that the mere fact that a property is being advertised for letting does not mean that it is currently empty and unused. Mr Koonjah declined to confirm that the property was actually empty and unused.

36. In conclusion, HMRC are no longer in a complete state of ignorance over the investment property: they know its address and have good reason to suspect it was purchased on 7 November 2013. Is this not enough to close the enquiries with the necessary amendments? I do not think so. As I said in *Price* [2011] UKFTT 624 (TC):

[10] ...HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody's time if HMRC are forced to make assessments without 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)."

This was mentioned with approval by Judge Sinfield in *Michael* [2015] UKFTT 577 (TC) who also said:

[30]We consider, however, that it would not be appropriate in this case to direct that HMRC must issue a closure notice when it is clear that further information is or may be available that will affect Mr Michael's liability to tax. .... Requiring HMRC to close the enquiry now would mean that they would be bound, on the evidence available to them, to amend the return .... In that situation, Mr Michael would have to appeal. If it can easily be established that the payments of rent are not his income ... then the issue of the closure notice at this stage and the

making of an appeal would be a waste of everyone's time. Accordingly, we are satisfied that HMRC have reasonable grounds for not giving a closure notice now.

37. HMRC still have no independent confirmation of the price paid (and the information provided by the taxpayer is conflicting) and have not been told to what use the property is put. My conclusion is that HMRC have satisfied me that they reasonably require information about the companies' accounts which they have not yet received even today. For these reasons, I am satisfied HMRC should not be directed to close the enquiry into tax return for YE 31 October 2013 in a specified period: it is up to the appellant to provide the necessary information to HMRC.

### **The second enquiry**

38. I note in passing that one of the appellant's original grounds of applying for closure was that the enquiry into the later of the two tax returns was invalid because it was opened on the same day as the first enquiry. Mr Koonjah stated at the hearing that he was no longer pursuing this ground of appeal and indeed none of his grounds of application were directed specifically to the second enquiry. Nevertheless, HMRC have to satisfy me that there are reasonable grounds to keep the enquiry open or I must order its closure.

39. I accept Ms Jones' case, and Mr Moss' evidence on this. The appellant produced accounts for a 14 months accounting period and therefore two tax returns to cover that single period. Having identified possible irregularities in the first tax return (to YE 31 October 2013), the enquiry into the return for the last two months of the accounting period (ended 31 December 2013) was opened on a protective basis, as any needed corrections to the first tax return might affect the second return. Indeed, Mr Moss now had good reason to suspect that the date of the property purchase may have been 7 November 2013 and therefore that both tax returns would require amending.

40. As the purchase price and use of the property was still uncertain, I was therefore satisfied that there were reasonable grounds to keep the second enquiry, as well as the first enquiry, open.

41. The application to close the enquiries is refused.

### **The appeal against the information notice**

42. The appeal against the information notice was lodged late with the Tribunal and the appellant applied for it to be accepted out of time. HMRC did not object, and I admitted the appeal.



## The law on information notices

43. Paragraph 1 of Schedule 36 of Finance Act 2008 provides as follows:

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

5 (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.

## Burden of proof

10 44. As I have said, paragraph 33(3) of Schedule 18 FA 98 makes it clear that the burden of proof in closure applications is on HMRC. Ms Jones' position was that the authorities were less clear on the subject of who had the burden of proof in an appeal against an information notice, but she proceeded on the basis that HMRC also had the burden of proof in such an appeal.

15 45. The point was considered in *Joshy Matthew* [2015] UKFTT 0139 [68-87] and more briefly in *Gold Nuts and others* [2017] UKFTT 354 (TC) at [60-63]. I agree with Judge Redston that, as the taxpayer would have the burden of showing that the information notice was wrongly issued in a judicial review action, it would odd if in an appeal against an information notice the burden shifted to HMRC; moreover, the  
20 general scheme of tax appeals is that the appellant has the burden of proof as the appellant has sole control of the evidence. I consider, therefore, that the appellant has the burden of proof in an appeal against an information notice under Schedule 36. Nevertheless, I note that the outcome of this appeal against the information notice would be the same even if I had concluded that HMRC bore the burden of proof. The  
25 main reason for that is that, as explained below, I have no jurisdiction to hear the appeal so burden of proof is not relevant; even if I am wrong about my jurisdiction, and must consider whether the information and documents were reasonably required, HMRC have satisfied me that they were. I explain this below.

## *No right of appeal as statutory records?*

30 46. The right of appeal against such an information notice, referred to as a 'taxpayer notice', is contained in paragraph 29 of the same schedule:

### **29 Rights of appeal**

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

35 (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.

47. In other words, there is a right of appeal but only to the extent that what HMRC requires to be produced does not comprise the taxpayer's statutory records. Paragraph  
40 62 sets out the definition of statutory records, as follows:

## 62 Statutory Records

(1) 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

5

(a) the Taxes Acts, or

(b) any other enactment relating to a tax.....

48. The 'Taxes Acts' are defined in paragraph 58 of Schedule 36. This definition includes 'the Tax Acts'. The Tax Acts are defined in the Interpretation Act 1978 as including the Corporation Tax Acts; the Corporation Tax Acts are defined in the same Act as meaning enactments relating to the taxation of the income and chargeable gains of companies. Schedule 18 of FA 1998 is therefore one of the Taxes Acts as it deals with the taxation of income and chargeable gains of companies.

10

49. And paragraph 21 of Sch 18 of FA 1998 provides as follows:

15

### 21 Duty to keep and preserve records

A company which may be required to deliver a company tax return for any period must -

(a) keep such records as may be needed to enable it to deliver a correct and complete return for the period, and

20

(b) preserve those records in accordance with this paragraph.

....

(3) If the company is required to deliver a company tax return by notice given before the end of the relevant day, the records must be preserved until any late date on which -

25

(a) any enquiry into the return is completed.

50. My conclusion is that any records within paragraph 21 of Sch 18 are therefore statutory records under paragraph 62 of Sch 36 and remain so during the duration of the enquiry.

30

51. Were the 3 items requested by HMRC in the information notice the subject of this appeal (see §9) statutory records? HMRC's case was that the purchase contract was a statutory record as it was the primary record of the price paid and date of purchase both of which needed to be known to create a correct tax return; both pieces of information at items (2) and (3) were also necessary to create a correct tax return. I agree.

35

52. However, Items 2 and 3 were requests for information and not a request for a record. How can something be a statutory record if it is merely information that may not previously have been written down? I consider my analysis at *Spring Capital 4219* at [69-78] on this question to be correct. In a nutshell, information which ought to have been recorded under paragraph 21 of Sch 18 FA 98 is a statutory record even if it wasn't in fact recorded. So a request for information can be a request for a statutory record: this is plain from paragraph 62(1) of Sch 36 of FA 08.

40

53. In conclusion, I have no jurisdiction to consider the appellant's appeal against the information notice. All 3 items requested were statutory records.

#### **Information known to HMRC**

54. Nevertheless, I set down my conclusion on the appellant's grounds of appeal even though I have concluded I have no jurisdiction to consider the appeal.

55. One ground of appeal, which I have dealt with in so far as it applied to the closure application, was that the information sought was already known to HMRC. I agree that information should only be sought if it is 'reasonably required' and it would not necessarily be reasonably required if it is already known, although it may be reasonably required if HMRC is requesting a primary record in order to check information from a potentially less reliable source.

56. However, so far as the validity of the information notice is concerned, although not the question of closure of the enquiries, the question of whether information is reasonably required must be viewed historically. The question is not whether the information is still required, but whether it was reasonably required at the time the notice was issued. Whether the information was later provided to HMRC is relevant to the question of compliance: it is not relevant to the question of the validity of the information notice. The provision of some of the required information to HMRC at the hearing on 12 July is relevant to compliance but it does not affect the validity of the information notice. In any event, not all of the information was provided: far from it, the contract of purchase has still not been provided nor has confirmation of the property's use.

57. I reject this ground of appeal: the information was not known to HMRC at the time the information notice was issued and to some extent is still not known to HMRC.

#### **Speculative enquiries**

58. It was not only Mr Koonjah's submission that HMRC had to have a reason to suspect an under-declaration before they could open an enquiry, it was also his position that they were not able to ask for information nor records without knowledge that there was an under-declaration as, he said, the law did not permit speculative information notices. For this submission, as before, he relied on HMRC's manual CH2350

59. I have already explained that CH2350 is that part of the HMRC manual dealing with paragraph 21(6) of Schedule 36. And that paragraph does state that where a taxpayer has filed a tax return, HMRC may not issue an information notice save where certain conditions are met. One of those conditions is Condition B, and condition B is contained in paragraph 21(6). And that is that HMRC must have 'reason to suspect that there is an under-declaration. The manual CH2350 goes further and states that the information sought by the information notice must relate to the 'reason to suspect':

‘reason to suspect’ does not allow you to make speculative enquiries, seeking information merely in the hope that something relevant will crop up. You must be able to identify specific risks.’

60. I do not need to consider whether this is a correct statement of the law as it is not applicable in this case. Nevertheless, it is obvious that the basis for Condition B is to supplement HMRC’s power to make discovery assessments. Discovery assessments are those made when enquiries are not ongoing: the policy is that random checking of returns must happen within an enquiry: they are not otherwise justified. So it may well be correct to say that the information notices issued outside an enquiry should be limited to requests for information about the matter with respect to which there is a reason to suspect under-declaration.

61. But Condition B is not the only condition permitting the issue of an information notice and the various conditions are alternative: Condition A is that a notice of enquiry has been given and the enquiry remains open. That is true in this case. So condition A on its face does not have the same limitation as Condition B: nor is there the same policy limitation as discussed in the previous paragraph. On the contrary, HMRC are entitled to make random checks of a tax return during an enquiry and therefore there is no reason on the face of paragraph 21 as to why there would be any limit on HMRC’s right to call for information and records for the purpose of checking that a tax return the subject of an open enquiry is accurate.

62. Paragraph 1 of Sch 36 requires that information or documents is ‘reasonable required’ for checking the taxpayer’s tax position: it does not carry any implication that the check of the taxpayer’s tax position cannot be random. Another way of putting this is that HMRC do not need a reason to suspect an under-declaration in order to issue an information notice where the enquiry is open: the only qualification is that the information they seek must be reasonable required to check that the return is accurate. The reasonableness relates to the information required and not to the check of the tax position, in that the check of the tax position could be random.

63. While paragraph 21(6) probably means that information notices cannot be issued to randomly check those parts of a tax return where there is no reason to suspect under-declaration, that is the case only if there is no open enquiry. In this case, there was an open enquiry, and so there is no requirement for HMRC to have a ‘reasons to suspect’ in order to justify the issue of the information notice. The question is simply whether the information sought was reasonably required to check the appellant’s tax position and I am satisfied that it was. Mr Moss had concerns that the property acquisition may not have been treated correctly in the accounts and tax return and reasonably required information to check that: HMRC does not have to prove (nor, more accurately, the taxpayer disprove) that HMRC had reason to suspect under-declaration of tax.

#### 40 **Enquiries must be justified**

64. It appeared that it was not just Mr Koonjah’s case that enquiries must be justified in the sense that the reasons for them must be explained to the taxpayer at the time the enquiry was opened, but that information notices had similarly to be justified to the

taxpayer at the time they were issued in order to be valid. I have rejected the case that enquiries had to be justified. I reject the case that information notices had to be justified to the appellant to be valid.

5 65. It is the case that HMRC was only entitled to issue an information notice if the information they sought was reasonably required to check a person's tax position. If the appellant could demonstrate that the information was not so required, then the appeal against the information notice ought to be allowed.

10 66. I find that the information required by the information notice was reasonably required to check the appellant's tax position for the reasons I gave for why the enquiries should not be closed (§§37, 39-40).

### **Linked enquiries and right not to self-incriminate**

67. As I have said, Mr Koonjah believed that the company was entitled to refuse to cooperate with the enquiry or provide information in reliance on its director's (Mr Budhdeo's) right not to self-incriminate.

15 68. As I have said above, the right not to self-incriminate is a right for a person not to answer question where the answer would self-incriminate: it is a right no one else can rely on. The company cannot rely on Mr Budhdeo's right not to self-incriminate. Put another way, no one (save a spouse) has the right to refuse to answer questions because it might incriminate someone else.

20 69. It is no answer to an information notice that providing the information might incriminate a director of the company: in any event, even if the right not to self-incriminate were relevant (eg if the information notice had been issued to the director) it is a matter that goes, if anything, to compliance: it cannot affect the validity of the issue of the notice.

### **25 Timing of the information notice**

70. One of the appellant's original grounds of appeal was that the information notice was invalid because it was issued on the same day as the enquiry to which it related was opened. Mr Koonjah informed me at the hearing that he no longer pursued this ground of appeal.

### **30 Conclusion**

35 71. I find that this Tribunal has no jurisdiction to entertain the appeal against the information notice, as the information notice only required statutory records to be provided. And if I were wrong on that, then I find that the appellant has not established that the information notice was invalid or that an appeal against it should be allowed. On the contrary, HMRC has satisfied me that the information notice was validly issued and in particular was issued to obtain information and a document that was reasonably required by the officer for the purpose of checking the appellant's tax position.

72. I dismiss the appeal.

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.

10

**BARBARA MOSEDALE  
TRIBUNAL JUDGE**

15

**RELEASE DATE: 20 JULY 2017**