[2017] UKFTT 354 (TC)

TC05828

Appeal numbers:
TC/2016/03094;TC/2016/03090
TC/2016/03091;TC/2016/03096
TC/2016/03097;TC/2016/03100

CORPORATION TAX – appeals against Sch 36 Notices and applications to close enquiries – whether to postpone hearing – Sch 36 Notices delivered at the same time as enquiry notices – whether Condition A of Sch 36 para 21 met – whether "information" includes Appellants' reason for not applying a statutory provision when calculating their tax – Sch 36 Notices upheld apart from three Items – no closure notices directed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

GOLD NUTS LIMITED **Appellants**
R SQUARE PROPERTIES LIMITED
CORONA PROPERTIES LIMITED
BRONZE NUTS LIMITED
VENTURE PHARMACIES LIMITED
BLACKBAY VENTURES LIMITED

- and -

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

TRIBUNAL: JUDGE ANNE REDSTON

Sitting in public at the Royal Courts of Justice, Strand, London on 4 January 2017

The Appellants were not represented at the hearing

Ms Harry Jones, of HM Revenue and Customs' Appeals and Reviews Unit, for the Respondents

DECISION

1. HMRC had opened enquiries under Finance Act 1998, Sch 18, para 24 into the corporation tax ("CT") returns for the 2013 accounting period filed by Gold Nuts Ltd ("Gold Nuts") and five of its subsidiary companies: Blackbay Ventures Ltd ("Blackbay"), Bronze Nuts Ltd ("Bronze Nuts"), Corona Properties Ltd ("Corona"), R Square Properties Ltd ("R Square"), and Venture Pharmacies Ltd ("Venture Pharmacies"), together "the Appellants".

2. HMRC also issued a Notice under Finance Act 2008, Schedule 36, paragraph 1 ("Sch 36 Notice") to each Appellant in respect of the same accounting periods, so there were six such Notices under appeal, each of which required one or more listed items ("Item" or "Items"); altogether 48 Items were listed. Each Appellant appealed against its Sch 36 Notice ("the Appeals").

3. In their notifications of the Appeals to the Tribunal, the Appellants also asked that "HMRC should issue [a] closure notice" in relation to the periods under enquiry. I have taken this as being an application for the Tribunal to direct the closure of those enquiries ("the Applications").

4. The Appellants applied to postpone the hearing of the Appeals and Applications, and no representative of the Appellants attended the hearing. For the reasons set out at §§41- 48, I decided not to stay the Appeals and Applications, but to proceed in the absence of the Appellants' representative. In order to understand the background to the Appellants' failure to send a representative, it is necessary first to set out what happened before the hearing commenced, and I explain this at §§17-36.

5. I went on to hear and consider the evidence and submissions in relation to the Sch 36 Notices. Having done so, I decided not to direct closure of any of the enquiries. I also upheld all the Sch 36 Notices, with the exception of the following three Items:

   (1) Item 10 of the Sch 36 Notice issued to Gold Nuts, and Item 15 of the Sch 36 Notice issued to Blackbay. These required explanations as to why the companies had not applied Corporation Tax Act 2010, s 455 in the context of loans they made to an LLP. In my judgment, that is not "information" which can be required under a Sch 36 Notice, see §§121-124.

   (2) Item 1 of the Sch 36 Notice issued to R Square. This required the provision of a "schedule" which had already been provided, see §§151-153.

6. In accordance with Sch 36, para 32(4)(a), I issued a direction requiring compliance with the Sch 36 Notices by thirty days from the date of issue of this decision, see §166.

7. The legislation relevant to the Appeals and Applications is set out in the Appendix.

The evidence

8. HMRC provided a helpful bundle containing the documentation relating to the Appeals and Applications.

9. Mr James Moss, the lead investigator responsible for enquiries into Gold Nuts and its subsidiary/related companies and businesses, provided a witness statement and gave oral evidence, led by Ms Jones. I found him to be an honest and straightforward witness.

10. On the basis of that evidence, and taking into account also the related litigation relied on by both parties, I make findings of fact about the Appeals and Applications generally at §§11-15 and §§17-18. Specific findings of fact in relation to each of the Appellants are set out in Part 4.

Findings of fact about the Appeals and Applications generally

11. R Square and Corona filed CT returns for the accounting period ended 31 December 2013 on 30 December 2014; Gold Nuts, Blackbay and Venture Pharmacies filed their CT returns for the same period on the following day, 31 December 2014. On the same day, Bronze Nuts filed its CT returns for the periods ending 21 June 2013 and 31 December 2013.

12. On 21 December 2015, Mr Moss opened enquiries in those CT returns under FA 1998, Sch 18, para 24. He then issued Sch 36 Notices, which he included in the same envelope as the notices of enquiry.

13. On the basis of Mr Moss's oral evidence I find that he issued the Sch 36 Notices without first inviting the Appellants to provide the information/produce the documents on a voluntary basis, because the Appellants had all received one or more Sch 36 Notice(s) for earlier periods to which they had not responded.

14. On 26 January 2016, the Appellants appealed against the Sch 36 Notices. On 24 February 2016, Mr Moss refused the Appellants' appeals. The Appellants asked for statutory reviews, but Mr Moss's decisions were upheld.

15. The Appellants notified their appeals to the Tribunal, and at the same time, asked the Tribunal to direct the closure of the enquiries opened by Mr Moss into their 2013 accounting periods. The Appellants also asked the Tribunal to direct that "HMRC should immediately withdraw from levying any penalties as suggested in the Sch 36 Notice for its non-compliance".

The structure of this decision

16. This rest of this decision is divided into the following Parts:

(1) Part 1 explains the postponement applications which preceded the hearing, and provides the background to the Appellants' failure to send a representative to this hearing.

(2) Part 2 considers three legal issues: the meaning of "statutory record"; the burden of proof in relation to Sch 36 Notices; and the case law on closure notices.

(3) Part 3 sets out the Appellants submissions as to why their appeals against the Sch 36 Notices should be allowed, including their submission that HMRC had failed to meet Condition A in Sch 36, para 21, see §§70ff. It also addresses the Appellants' request that the Tribunal issue a direction on penalties.

(4) Part 4 considers each of the Appellants in turn, looking at both the Sch 36 Notices and the closure notice applications.

(5) Part 5 is the overall decision and appeal rights.

PART 1: THE POSTPONEMENT APPLICATIONS & FAILURE TO ATTEND

The *Gold Nuts* litigation

17. Gold Nuts is the parent company of a group which includes all the other Appellants. The group is controlled by Mr Shamir Budhdeo, acting together with other family members. The Appellants were registered for Value Added Tax ("VAT").

18. On 6 December 2013, HMRC opened an enquiry into Mr Budhdeo under Code of Practice 9 ("COP9") because HMRC suspected tax fraud. Mr Budhdeo denied tax fraud and refused to sign the Contractual Disclosure Facility offered as part of the COP9 process. On 4 March 2014 HMRC informed Mr Budhdeo that the COP9 enquiry was continuing as a civil investigation.

19. Mr Budhdeo applied to the First-tier Tribunal ("FTT") for the COP9 enquiry to be closed. On 8 February 2016, I decided that the FTT has no jurisdiction to close the COP9 enquiry, and that the only way to challenge such an enquiry is by judicial review at the Administrative Court, see *Gold Nuts and others v HMRC* [2016] 0082 (TC) at [41]-[80].

20. On 19 May 2016, Mr Budhdeo applied to the High Court for permission to bring a judicial review ("JR") claim against HMRC. On 5 August 2016, Soole J refused Mr Budhdeo's JR application on the papers, because it was "long out of time" and because "the grounds of claim have no substance". Mr Budhdeo applied for an oral hearing of his permission application; this was listed to be heard on 6 December 2016.

21. Mr Budhdeo, Gold Nuts, other group and related companies and Symbio Energy LLP ("Symbio ") had also applied to close HMRC's statutory enquiries for periods from 2010 through to 2012. Those applications, along with related appeals against Sch 36 Notices and penalties, were listed to be heard before the Tribunal during four days beginning on 30 November 2016.

22. Mr Budhdeo made three successive applications for that hearing to be stayed "until the judicial review outcome", and his applications were supported by the other

appellants. The first two applications were refused by Judge Mosedale on the papers. I refused the third following oral submissions from the parties on 30 November 2016.

23. The parties' submissions, and my reasons for refusing the stay, are set out in *Gold Nuts and others v HMRC* [2017] UKFTT 84 (TC) at [16]-[59]. I have called that judgment "the Substantive Decision" because it finally determined the substantive appeals and applications which were before the Tribunal at the hearing in October and November 2016, and there had been two preliminary decisions of those appeals and applications; I have called the related hearing "the Substantive Hearing".

24. Mr Budhdeo withdrew from the Substantive Hearing soon after I had given my reasons for refusing his stay application. Mr Koonjah, who represented the other appellants, withdrew at the same time. I considered whether to adjourn the Substantive Hearing in the light of their withdrawal, but decided not to do so. My reasons are set out at [60]-[71] of the Substantive Decision.

The joinder application, the listing and the postponement applications

25. Meanwhile, on 12 August 2016, the Appellants had applied for the Appeals and Applications to be joined to the appeals and applications to be heard at the Substantive Hearing. On 12 September 2016, HMRC expressed reservations as to whether it would be possible to provide witness statements before the Substantive Hearing, but otherwise did not object to the joinder.

26. On 22 September 2016, the Tribunal asked the Appellants to confirm in writing within 10 days whether they wished to maintain their joinder application on the basis that there would be no HMRC witness statement(s) in advance of the hearing, and that if the Tribunal received no reply within that 10 day period, it would assume that the application had been withdrawn.

27. No reply was received. On 13 October 2016, the parties were informed by the Tribunal that the Appeals and Applications would not be listed to be heard with the other appeals and applications as part of the Substantive Hearing.

28. On 15 November 2016, the Tribunal notified the parties that the Appeals and Applications had been listed to be heard on 4 January 2017. On 17 November 2016, the Appellants asked for the hearing to be rescheduled for "any time after the second week of January 2017" because their representative was unable to attend on 4 January 2017.

29. HMRC responded the following day, pointing out that the Appellants had withdrawn from the Substantive Hearing, and that unless they now intended to send a representative to the 4 January hearing, it was unnecessary to reschedule that date. HMRC also asked whether the Appellants had informed the Tribunal that 4 January was one of their "dates to avoid".

30. On 23 November 2016, Judge Mosedale refused the Appellants' application for the hearing to be rescheduled, for the following reasons:

(1) the Appellants had been asked to provide dates to avoid, but failed to do so;

(2) the Appellants were among the Gold Nuts companies who were appellants at the Substantive Hearing, and Mr Koonjah, their representative, had withdrawn from that hearing. As a result, it is "far from certain that the appellants would attend the hearing on 4-1-17 and therefore far from clear that they would suffer any procedural prejudice if postponement was refused"; and

(3) the Appellants had not explained why their representative was unavailable, so it was not possible "to form a view on whether in fact the reason for the unavailability actually justifies a postponement."

31. On 20 December 2016, the Appellants informed the Tribunal that on 6 December 2016, the High Court had refused to grant Mr Budhdeo's permission application, and he had subsequently filed an appellant's notice with the Court of Appeal against that refusal.

32. On the same date, the Appellants made a new application for the hearing of the Appeals and Applications to be postponed "until JR determination". That application substantially reiterated the reasons given by Mr Budhdeo and Mr Koonjah for the Substantive Hearing to be stayed.

33. It also said that the Appellants had not provided dates to avoid for the further hearing of the Appeals and Applications, because when their dates to avoid had been requested, the Appellants were (a) asking for the Appeals and Applications to be joined to those listed to be heard at the Substantive Hearing, and (b) for the Substantive Hearing to be adjourned because of the JR Application, and "if the Appellants had to provide their dates to avoid then it would have acted in contradiction to their request for merger and postponement".

34. On 29 December 2016, I refused that postponement application on the papers, for the following reasons:

(1) I had already refused to stay the Substantive Hearing behind Mr Budhdeo's JR application, largely because there was no overlap between (a) appeals against Sch 36 Notices and penalties, and closure notice applications and (b) the matters which Mr Budhdeo was asking the High Court to determine. This application essentially recapitulated the same arguments which the appellants had made at the Substantive Hearing. For the same reasons, the listed hearing of the Appeals and Applications should not be postponed pending the final outcome of Mr Budhdeo's JR litigation.

(2) In relation to the explanation now provided for the Appellants' failure to give dates to avoid, I said:

(a) at the time the Appellants were asked for dates to avoid, they did not respond;

(b) Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules") requires the Appellants to

co-operate with the Tribunal; that includes responding to correspondence, including requests for dates to avoid; and

(c) there is no good reason why the Appellants could not have provided dates to avoid, while still reiterating their preference for the hearings to be merged.

35. That refusal was communicated to the parties by email. The Appellants renewed their postponement application by a letter emailed to the Tribunal on 3 January 2017. In the renewed application, the Appellants explicitly accepted that their position had not changed since the Substantive Hearing, and said that:

> "where the judicial review proceedings are yet to be fully determined and culminated, advancing further with this hearing would be detrimental to adequately determining the issues in hand, besides leading to unnecessary cost and wasting of the valuable time and resources of the Tribunal as well as the Parties involved."

36. This was a reiteration of the similar submissions made at the Substantive Hearing, see [33] of the Substantive Decision. Having heard those submissions, I had decided that there was no overlap between the appeals and applications to be decided in the Substantive Hearing, and the issues which Mr Budhdeo had asked the High Court to determine in his JR application. As a result, staying the Substantive Hearing would have resulted in wasted time and costs, both for the parties and the Tribunals Service (see the Substantive Decision, particularly at [44] and [57]).

37. The postponement application continued as follows:

> "accordingly the Appellant do wish not to make any further submission until the judicial review proceedings are culminated. Mr Budhdeo is still pursuing the judicial review and hence the Appellants would not participate in the hearing listed for tomorrow."

The renewed application and the failure to send a representative

38. I delayed the start of the hearing by 15 minutes in case the Appellants sent a representative, despite their statement in their letter of the previous day, but no representative of the Appellants attended the hearing.

HMRC's submissions

39. I asked HMRC for submissions on whether the hearing should be postponed in the light of the renewed application. Ms Jones submitted that the hearing should proceed, because:

(1) the Tribunal had already considered whether to stay appeals against Sch 36 Notices and closure notice applications behind Mr Budhdeo's JR litigation and had decided not to do so. The position remained the same: there was no overlap between the JR application and these Appeals and Applications, just as there had been no overlap between the JR application and the Sch 36 Notices and closure notice applications before the Tribunal at the Substantive Hearing;

(2) the Appellants' explanation as to why they had not provided dates to avoid should be rejected, for the reasons set out in the Tribunal's email of 29 December 2016;

(3) the Appellants had been well aware that the hearing had been listed for 4 January 2017; two postponement applications had already been refused and this was the third;

(4) in the first postponement application, the Appellants had stated that their representative was "unavailable" to attend the hearing on 4 January 2017, but had never explained why, despite Judge Mosedale also identifying the Appellants' failure to provide an explanation; and

(5) if the hearing were now postponed, there was no certainty that the Appellants would attend a relisted hearing; as Judge Mosedale had said, continuing with the hearing may therefore not prejudice the Appellants in any event.

40. Ms Jones said that it was in the interests of justice to continue, but that HMRC would be mindful of the fact that the Appellants were not represented and would endeavour to ensure that their case was put to the Tribunal.

Discussion and decision

41. I first considered Rule 33 of the Tribunal Rules, which reads:

> **"Hearings in a party's absence**
>
> If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal–
>
> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
>
> (b) considers that it is in the interests of justice to proceed with the hearing."

42. The Appellants had clearly been notified of the hearing. I went on to consider whether it was in the interests of justice to proceed.

43. If I did not proceed, the Appellants would have succeeded in their postponement application, even though their earlier applications had already been refused by Judge Mosedale and by myself, and their circumstances had not changed since the second application on 20 December 2016. It is clearly not in the interests of justice for parties to be able to circumvent the Tribunal's decisions refusing postponement, by the simple device of failing to attend a hearing.

44. I also considered Rule 2 of the Tribunal Rules. Rule 2(2)(a) requires me to act "in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties". The Appeals relate to Sch 36 Notices and the closure notice Applications, both of which are relatively straightforward. In relation to cost, HMRC had put together the Bundles, Ms Jones had attended to put HMRC's case, and Mr Moss was present as a witness. If the

hearing were postponed, HMRC would have further expenditure in terms of staff time and travel costs.

45. Rule 2(2)(c) requires me to ensure that "so far as practicable…the parties are able to participate fully in the proceedings". If the hearing proceeded, the Appellants could not participate, but that was the inevitable consequence of their own decision not to send a representative. Furthermore, there was no good reason for that decision. I had explained in the Substantive Hearing that there was no link between (a) the JR Application and (b) the matters to be decided in that hearing, and the position was the same in relation to this hearing.

46. Rule 2(2)(e) requires me to avoid delay, so far as compatible with proper consideration of the issues. A postponement would clearly cause delay, but the Tribunal had received the Appellants' written submissions in support of the Appeals and Applications which would allow the case to proceed in their absence.

47. Rule 2(4) provides that the parties must "help the Tribunal to further the overriding objective; and co-operate with the Tribunal generally". The Appellants failed to provide dates to avoid; did not reply to the Tribunal's letter of 22 September within the 10 days specified or at all; initially did not explain why their representative could not attend this hearing, and later refused to send a representative on the basis that there is a link between the Appeals and Applications and the JR application, when the Tribunal explained at the Substantive Hearing that there is in fact no such link. These are all relevant factors which indicate that it is in the interest of justice to proceed, despite the Appellants' failure to send a representative.

48. More generally, Davis LJ (with whom Sullivan LJ and Laws LJ agreed) said in *Chartwell Estate Agents v Fergies Properties* [2014] EWCA Civ 506 at [28] that the interests of justice include:

> "the interests of other court users: who themselves stand to be affected in the progress of their own cases by satellite litigation, delays and adjournments occurring in other cases..."

49. Taking all relevant factors into account, I decided that it was in the interests of justice to proceed with the hearing.

PART 2: VARIOUS LEGAL POINTS

50. The Appeals and Applications raise a number of questions of law, including:

(1) what constitutes a statutory record;

(2) whether HMRC or the Appellants have the burden of proving that an Item is "reasonably required"; and

(3) what approach the Tribunal should take when deciding whether to direct the closure of a statutory enquiry.

51. Neither HMRC nor the Appellants made submission on these issues, but as they are relevant to the matters before the Tribunal, I set out the approach I have taken.

Statutory Records

52. Sch 36, para 29 provides that a person has the right of appeal against a Sch 36 Notice, or any requirement in the Notice, but that there is no right of appeal against "a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records". It is therefore important to establish which Items in the Sch 36 Notices form part of the Appellants' statutory records, as those Items cannot be considered by the Tribunal.

53. Sch 36, para 62 is headed "statutory records" and begins:

> "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…"

54. 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. If, for example, a company is VAT registered, and a document is required to be kept for VAT purposes, then it is a "statutory record", even if the Sch 36 Notice has been issued in the context of an enquiry into its CT return, as is the case here.

55. FA 1998, Sch 18, para 21(1)(a) requires that a company keep "such records as may be needed to enable it to deliver a correct and complete return for the period". I agree with the comments made in *Couldwell Concrete Flooring v HMRC* [2015] UKFTT 136 (Judge Cannan and Mr Robertson) on the scope of that subparagraph:

> "[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."

56. FA 1998, Sch 18, para 21(5) specifies that a company's statutory records include:

> "(a) all receipts and expenses in the course of the company's activities, and the matters in respect of which the receipts and expenses arise, and
>
> (b) in the case of a trade involving dealing in goods, all sales and purchases made in the course of the trade."

57. As the Companies are VAT registered, they are required to comply with extensive statutory record-keeping requirements at VATA Sch 11 para 6 and Reg 31 of the VAT Regulations 1995 ("VATR"). The latter states that the records which must be retained include the "business and accounting records"; copies of all VAT invoices; documentation issued or received by the company relating to "the transfer, dispatch or transportation of goods" and to "importations and exportations", as well as "all credit notes, debit notes, or other documents which evidence an increase or decrease in consideration".

58. For the reasons explained in the Substantive Decision, and imported by reference, I find that both information and documents can be statutory records, see [132]-[134]; that contracts are statutory records, see [144], and that explanations of accounting entries are also statutory records, see [146] and in any event those explanations would be reasonably required for the purposes of checking a company's tax position, because they provide the explanation for entries in the prime records.

59. 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.

Burden of proof in Sch 36 Notices

60. The Sch 36 Notices were issued to the Appellants under FA 2008, Sch 36, para 1(1), which reads:

> "**Power to obtain information and documents from taxpayer**
>
> (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."

61. To satisfy this requirement, the information/documents required by the Sch 36 Notices must be "reasonably required" by Mr Moss for the purposes of checking each Appellant's tax position.

62. In *Joshy Mathew v HMRC* [2015] UKFTT 0139 ("*Mathew*") in [68]-[87] the tribunal (myself and Ms Myerscough) discussed whether HMRC or the appellant had the burden of proof of establishing that documents/information are "reasonably

required", and found that the weight of authority indicates that the burden rests on the appellant. However, as neither party had made submissions on that issue, we adopted the working assumption that the burden rested on HMRC.

63. In this case too, neither HMRC nor the Appellants addressed the burden of proof. I therefore proceeded on the basis that the burden rests with HMRC, and found that HMRC had met that burden. Had that not been the position, I would have asked the parties for submissions on the burden of proof.

Closure Notices

64. HMRC have the burden of showing that there are "reasonable grounds" for not issuing a closure notice, see FA 1998, Sch 18, para 33(3). The next following paragraphs summarise some of the many case law authorities on closure notices.

65. In *HMRC v Vodafone 2* [2006] STC 483 at [44] Park J said that the statutory provisions on closure notices are "constructed so as to produce a reasonable balance" between HMRC's enquiry and investigation powers on the one hand, and protection for those who wish to question whether the use of those enquiry powers continues to be justified, on the other.

66. In *Eclipse Film Partners No 35 LLP v HMRC* [2009] STC (SCD) 29, Special Commissioner Sadler said at [19] that HMRC are not required to have "pursued to the end every line of enquiry or investigation" before a closure notice can be issued, and in *Bloomfield v HMRC* [2013] UKFTT 593 (TC) ("*Bloomfield*") Judge Blewitt took into account, when deciding whether to direct closure, "the fact that this enquiry has been ongoing for a significant period of time, the co-operation of the Appellant and the queries which remain outstanding".

67. In *Stephen Price v HMRC* [2011] UKFTT 624 (TC) (Judge Mosedale and Mr Hughes) the appellant submitted that the enquiry could be closed and an estimated assessment made. The tribunal said:

> "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)."

PART 3: THE OVERALL SUBMISSIONS

68. The Appellants all made the same submissions, none of which related to particular Items in their Sch 36 Notices. HMRC responded to those submissions and also made individual submissions relating to particular Items in the Sch 36 Notices. The Appellants' submissions were that:

(1) Condition A of Sch 36, para 21 was not met;

(2) the issuance of the Sch 36 Notices was unreasonable because the Tribunal had not yet determined whether other Sch 36 Notices issued to the Appellants should be upheld;

(3) the issuance of the Sch 36 Notices was unreasonable in the context of protective enquiries into the accounting periods; and

(4) the information/documents required by the Sch 36 Notices were "exorbitant and unreasonable".

69. The next following parts of my decision consider each of those submissions, HMRC's responses, and my conclusions.

Condition A not met?

70. Sch 36 para 21 includes the following subparagraphs:

> "(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.
>
> (3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.
>
> (4) Condition A is that a notice of enquiry has been given in respect of—
>
> (a) the return, or
>
> (b) …
>
> and the enquiry has not been completed.
>
> (5) In sub-paragraph (4), 'notice of enquiry' means a notice under…
>
> (a) …
>
> (b) paragraph 24 of Schedule 18 to FA 1998."

71. In their grounds of appeal to the Tribunal, the Appellants submitted that Condition A was not met, because the notice of enquiry and the Sch 36 Notice were both included in the same envelope. In their submission, the Condition is only met if the statutory enquiry was "already open" at the time the Sch 36 Notice was issued, because para 21(4) requires that the notice of enquiry "has been given".

72. Ms Jones disagreed. In her submission Condition A was met if HMRC issued the notice of enquiry at the same time as the Sch 36 Notice. Had the Condition required that the notice of enquiry be served "before" the Sch 36 Notice, the legislation would clearly indicate that requirement. Ms Jones also confirmed that HMRC were not relying on any of the other Conditions.

73. No case law was cited by either party, and I was also unable to identify any previous judgment on this point. I therefore considered whether, as a matter of

statutory construction, the Appellants or HMRC were correct in their reading of Condition A. I came to the conclusion that HMRC were correct, for three reasons:

(1) HMRC's reading is consistent with the purpose of the provision;

(2) it is supported by the Explanatory Notes; and

(3) there are two insurmountable difficulties with the Appellants' reading of Condition A.

74. I explain each of those reasons in the next following paragraphs.

The purpose of the provision

75. In *HMRC v Trigg* [2016] UKUT 165 (TCC) (Asplin J and Judge Berner), the Upper Tribunal said at [34]:

> "The task for the courts and tribunals, in all cases, is to construe the statutory language of a particular provision in its context and having regard to the scheme of the legislation as a whole in order to ascertain and give effect to its purpose."

76. I therefore begin by looking at Condition A in its context. Sch 36 para 21 prevents HMRC from issuing a Sch 36 Notice if the taxpayer has filed a self-assessment ("SA") return, unless one of four conditions are met. Condition A is that a notice of enquiry "has been issued"; Condition B is that the HMRC officer "has reason to suspect" that the correct amount of tax has not been assessed; Condition C is that the information/document required relates to a tax other than income tax, capital gains tax or corporation tax; and Condition D is that the information/document is required in relation to PAYE.

77. My reading of para 21 is that its purpose is to limit the use of Sch 36 Notices where a taxpayer has already complied with its statutory obligation to file an SA return, and has thereby provided information/documents in accordance with that obligation. HMRC have 12 months to enquire into an return, with an extension if the return is filed after the due date, or if the return is amended, see FA 1998, Sch 18, para 24 and the similar limits in Taxes Management Act 1970, s 9A in relation to individuals. In other words, HMRC have a time-limited right to enquire into an SA return, which is known as the "enquiry window".

78. If HMRC could at any time require the provision of any information/documents by using Sch 36, the enquiry window would be deprived of effect. In other words, although the enquiry window was firmly shut, Sch 36 would provide HMRC with an open door through which it could ask any reasonable question, without limit as to time.

79. HMRC's enquiry powers are also limited to a single enquiry into each return: FA 1998, Sch 18, para 24(5) provides that "a return which has been the subject of one notice of enquiry may not be the subject of another…". Consistently with that requirement, Condition A includes the further specification that a Sch 36 Notice can only be issued if the statutory enquiry "has not been completed".

80. The purpose of Condition A is therefore to ensure that HMRC's Sch 36 Notice powers do not undermine the existing statutory restrictions on its enquiry powers. Para 21(4) states that, if a CT return has been filed, a Sch 36 Notice can only be issued if (a) an enquiry notice "has been given" and (b) the enquiry "has not been completed". In other words, the purpose of the Condition is to ensure that a Sch 36 Notice can be given if there is an open enquiry. That purpose does not prevent a notice of enquiry and a Sch 36 Notice from being issued at the same time.

81. This reading fits with Condition B, which provides that a Sch 36 Notice can be issued if the officer "has reason to suspect" there is an underassessment, or that a tax relief is excessive. This is a higher threshold than the "reasonably required" test in Sch 36 para 1.

82. Thus, where a CT return has been filed, Condition A only allows HMRC to issue Sch 36 Notices but there is an open enquiry; Condition B allows Sch 36 Notices to be issued outside the enquiry window, but only if the higher "reason to suspect" test is met.

The Explanatory Notes

83. In *R (oao Westminster CC) v National Asylum Support Service* [2002] 1 WLR 2956, Lord Steyn said at [5]:

> "In so far as the explanatory notes cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed, such materials are therefore always admissible aids to construction…The object is to see what is the intention expressed by the words enacted."

84. I therefore had regard to the Explanatory Notes to Finance Bills 2008 and 2009. Although they do not provide any useful commentary on Condition A, what they say about Conditions C and D is nevertheless of assistance.

85. In Finance Act 2008 Condition C was worded 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 that person's VAT position."

86. The Explanatory Notes to Finance Bill 2008 said that the subparagraph "has the effect that [Sch 36] notices in relation to VAT are not restricted by reference to the enquiry framework, which does not exist for VAT."

87. Finance Act 2009 extended Sch 36 to further taxes, and clause 95 together with Sch 48 changed Condition C to the current version. The phrase "that person's VAT position" was replaced by "the person's position as regards any tax other than income tax, capital gains tax or corporation tax". The Explanatory Notes to Finance Bill 2009 said:

> "Paragraph 21 of Schedule 36 restricts HMRC's power to ask for information to check an income tax, CGT or CT position for a period for which a tax return has been submitted. This replicates the existing

> arrangements (the enquiry window). This restriction does not apply for checks in relation to VAT which does not have an equivalent enquiry mechanism."

88. The current version of Condition D is substantially the same as that introduced by FA 2008, and the related Explanatory Note said:

> "This has the effect that notices in relation to PAYE are not restricted by reference to the enquiry framework, which does not exist for PAYE."

89. The Explanatory Notes on both Conditions C and D therefore reinforce my conclusion that that the purpose of Condition A is that Sch 36 Notices must comply with the "enquiry framework" which applies for corporation tax, capital gains tax and income tax. That framework does not apply for other taxes, or for PAYE, and Conditions C and D therefore allow the Sch 36 Notice to be given at any time if HMRC are checking those other taxes.

The difficulties with the Appellants' reading

90. On the Appellants' reading, there are two difficulties. The first is that the statutory provision would have been satisfied had the HMRC Officer handed the notice of enquiry to the taxpayer at 9am, and then handed him the Sch 36 Notice at 9.01am. There is no practical difference between that scenario, and HMRC sending the taxpayer the two notices in the same envelope. Parliament could not have intended that Condition A would be would be failed if the two were notices delivered at the same time, but satisfied if there was a gap of a minute between their delivery.

91. The second problem follows from the first: had Parliament intended there to be a time gap – for instance, to allow the taxpayer time to provide the information voluntarily – further detail would have had to be inserted into the provision to specify the length of the gap: for example "Condition A is that a notice of enquiry has been given *at least 30 days beforehand*…". There is no such detail, and, as Ms Jones points out, the statutory phrase does not even contain an indicator word, such as "before" or "already", such as "Condition A is that a notice of enquiry has *already* been given…".

Conclusion on Condition A

92. I therefore find that Ms Jones's reading of Condition A is correct, because:

(1) it is consistent with the natural reading of para 21, as being a restriction on HMRC's power to issue Sch 36 Notices outside the enquiry window;

(2) it is supported by the Explanatory Notes to Finance Bills 2008 and 2009, with their explicit references to "the enquiry window";

(3) the Appellants' reading would mean that the Condition would be satisfied where there was any gap – even a scintilla of time – between delivering the notice of enquiry and delivering the Sch 36 Notice, and that cannot have been Parliament's intention; and

(4) to give effect to the Appellants' interpretation, Parliament would have had to insert additional words into the Condition.

93. It follows that Condition A is satisfied. This ground of appeal does not succeed.

Other appeals and applications

94. The Appellants submitted that it was unreasonable of HMRC to open new enquiries and issue further Sch 36 Notices, when the Appellants had (a) applied to have earlier enquiries closed and (b) appealed the related Sch 36 Notices, and those appeals and applications had not yet been determined.

The enquiries

95. In relation to the enquiries, HMRC relied on *Qualapharm Ltd v HMRC* [2016] UKFTT 0100 (TC) where Judge Mosedale said:

> "where an enquiry was open for the earlier years because of concerns over the general accuracy of the taxpayer's returns, HMRC are virtually bound in the course of their duty, to open an enquiry into the later years as errors in tax declarations in one year might reasonably be supposed to continue in later years: it was therefore quite reasonable for HMRC to open the enquiry into 2012 during the enquiry into the previous year."

96. In my judgment the question of whether errors in the earlier years "might reasonably be supposed to continue in later years" depends on the facts of each case. However, I do not need to rely on *Qualapharm* to find that HMRC cannot be acting unreasonably if they open an enquiry into a later year, even though (a) the taxpayer has asked the Tribunal to close an earlier year's enquiry and (b) that application remains to be determined by the Tribunal. I say that for two reasons:

(1) as already discussed, HMRC have a statutory time limit, usually twelve months, within which they are able to open enquiries. It must be reasonable for HMRC to open enquiries within that time limit, whether or not the taxpayer has asked the Tribunal to close earlier enquiries, and

(2) were the Appellants correct, it would be possible for taxpayers to block enquiries into later years by the simple device of asking the Tribunal to close enquiries opened into earlier years. This would frustrate the purpose of the enquiry window.

The Sch 36 Notices

97. HMRC did not specifically respond to the Appellants' submission that the issuance of further Sch 36 Notices was also unreasonable. But that submission too is clearly wrong, for similar reasons:

(1) as already noted, Sch 36 para 21 sets certain statutory conditions before a Sch 36 Notice can be given. Condition A is linked to the enquiry window. Just as it cannot be unreasonable if HMRC open a statutory enquiry during that period, it also cannot be unreasonable if they also issue a linked Sch 36 Notice; and

(2) it would be absurd to hold that a taxpayer could significantly delay, or even prevent, the issuance of future Sch 36 Notices by the simple device of appealing earlier Notices. Such an outcome would fetter HMRC's investigations, by making them dependent on Tribunal processes relating to a different Sch 36 Notice.

Protective enquiry?

98. When the Appellants appealed against the Sch 36 Notices on 20 January 2016, Mr Moss responded by saying that "as the matters before the Tribunal have not yet been decided, HMRC needs to protect its position by opening enquiries into later corporation tax (CT) returns before the deadline passes for doing so" and pointing out that in relation to the 2013 accounting period, that deadline would have expired on 31 December 2015.

99. In reliance on that response, the Appellants submitted that it was unreasonable of HMRC to have issued the Sch 36 Notices, because their position *vis à vis* the right to open an enquiry could have been protected simply by sending the notice of enquiry: there was no need to issue the Sch 36 Notices.

100. Ms Jones responded by saying that these enquiries were not "protective enquiries"; this was clear from the wording of the enquiry notices which say:

> "every year we check a number of returns to make sure they are correct and that our customers are paying the right amount of tax. We would now like to check your Company's return…"

101. I agree with Ms Jones that the wording on these enquiry notices is different from that used in opening letters used in relation to some earlier periods. As set out at [109] of the Substantive Decision, HMRC's enquiry notices for the year ended 2011 read:

> "At the moment, I do not need any information from you about this particular return. I am protecting HMRC's position to make enquiries should the need arise and depending on other enquiries HMRC has into various connected/associated parties."

102. Even had the enquiries had been opened on a "protective" basis, no special legislation applies to such enquiries. FA 1998, Sch 18, para 24(1) simply states that:

> "An officer of Revenue and Customs may enquire into a company tax return if they give notice to the company of their intention to do so ('notice of enquiry') within the time allowed."

103. Whether or not a Sch 36 Notice is a matter for HMRC. The Tribunal has no jurisdiction to strike down a Sch 36 Notice because HMRC opened its statutory enquiry on a "protective basis", even where that is the position. The taxpayer's protection lies in its right to appeal that Notice to the Tribunal on the basis that one of the provisions of that Schedule, such as the "reasonably required" test, has not been met. I carry out that detailed exercise at Part 4 of this decision.

Exorbitant and unreasonable?

104. The Appellants submitted that the information/documents required are "exorbitant and unreasonable" as they require the provision of "a plethora of information". Ms Jones's response was that each Item included in the Sch 36 Notices was either a statutory record, or met the "reasonably required" test.

105. The Tribunal's task in these appeals is to decide whether those Items which are not statutory records are "reasonably required". A disproportionate requirement will not be reasonable. However, whether or not the statutory "reasonably required" test is met must be considered on an Item by Item basis. I cannot allow the Appellants' appeals on the basis that responding to the Sch 36 Notices, when taken together, requires the provision of a "plethora of information".

Penalty direction?

106. The Appellants' Notices of Appeal asked the Tribunal to direct that "HMRC should immediately withdraw from levying any penalties as suggested in the Sch 36 Notice for its non-compliance".

107. Each of the Sch 36 Notices consists of two parts. The first part explains what is meant by a Sch 36 Notice and sets out the legal powers under which it is being issued. Under the heading "what will happen if you do not do what this notice asks", it says:

> "If the company does not do what this notice asks, the company may have to pay a penalty of £300 without further warning. If the company still has not done what this notice asks by the time I have issued this penalty, the company may have to pay a further daily penalty of up to £60 a day until it does."

108. The Sch 36 Notice continues by warning of (a) similar penalties if the recipient conceals, destroys or disposes of any document required by the Sch 36 Notice, and (b) a penalty of up to £3,000 for carelessly or deliberately providing inaccurate information or documents.

109. By Sch 36, paras 39-40A, Parliament has given HMRC the power to levy the penalties summarised by HMRC in the Sch 36 Notices. The Tribunal has no jurisdiction to give an advance direction that HMRC "withdraw from levying" those penalties. The Appellants' protection lies in their right to appeal to the Tribunal if any such penalties are in fact levied, see Sch 36, para 47.

PART 4: THE APPEALS AND APPLICATIONS: SPECIFICS

110. HMRC submitted that each of the Items was either a statutory record, or reasonably required. The Appellants made no submissions on the individual Items. However, I nevertheless considered whether or not HMRC's submissions are correct. The next following parts of this decision looks at the Sch 36 Notices issued to each Appellant. In making my findings of fact I have rounded the numbers in the Appellants' statutory accounts and CT returns to the nearest thousand, unless the figure is very low, or the specific numerical amount is relevant to my decision.

Gold Nuts

Gold Nuts: facts

111. Gold Nuts is owned as to 12.5% by Mr Amajit Singh Hundal, with the balance of 87.5% being owned by Budhdeo Holdings Ltd, a Guernsey registered company which Mr Budhdeo owns together with his brother, Mr Sanjay Budhdeo and his father, Mr Pravin Budhdeo; each holds the same number and value of shares.

112. Gold Nuts is the holding company and treasury management company of a corporate group; its subsidiaries include all the other Appellants. Its directors during the year to 31 December 2013 were Mr Budhdeo, Mr Hundal and Mr Joshy Mathew.

113. Its statutory accounts for the year to 31 December 2013 show that:

(1) turnover was £642k and cost of sales £485k; the latter is described as "interest payable". Profit for the year was £93k. The notes to the accounts say there is "no liability to UK corporation tax";

(2) net assets are £78k; debts falling due after more than one year are £12,447k, of which £5,614k relates to group undertakings and the balance to "other loans";

(3) credit amounts falling due after more than one year are £12,494k, of which £11,617k is described as "other loans", up from £7,593k in the previous year;

(4) Gold Nuts owed Symbio £1,225k; the previous year the debt was £452k. Members of Symbio during the year were Mr Budhdeo, Mr Hundal and Mr Mathew. As previously noted, Mr Hundal also owns 12.5% of Gold Nuts and Mr Budhdeo owns 1/3 of the balance, via his shareholding in Budhdeo Holdings Ltd; and

(5) Mr Budhdeo owed £2,343k to Gold Nuts; the previous year he owed £568. Mr Hundal owed £878k; the previous year he owed £105. Mr Mathew owed £266k, compared to a nil balance the previous year.

114. The company's CT returns state that the loans to the directors were "repaid, released or written off" within nine months after 31 December 2013; that the profit for tax purposes was £100k and that group relief of the same amount was surrendered to Gold Nuts by Blackbay.

Gold Nuts: Sch 36 Notice

115. The Sch 36 Notice contains 11 Items. Item 1 requires "fully annotated" copies of the directors' loan/current accounts with the company. These are statutory records.

116. Item 2 requires "full details of any sources for and dates of credits to" the directors' loan accounts, to "demonstrate that they were repaid within 9 months of the period end, supported by documentary evidence". Mr Moss said that these loans were not shown as taxable income of the directors in their subsequent SA returns. From what HMRC knew of the directors' means, it was difficult to see how they had repaid

these sums. Thus, Mr Moss submitted that it was reasonable to require the stated information/documents.

117. The dates of the credits to the loan accounts, supported by documentary evidence (such as bank accounts) are statutory records. As to the other parts of this Item, I agree with Mr Moss that it is reasonable to require that information/those documents, for the reasons he gives.

118. Items 3-6 relate to the "other loans" creditor of £11.6m. Items 3, 5 and 6 require the full name of each creditor and the amount owed; contracts and agreements relating to the loans, and copies of bank statements: these are all statutory records.

119. Item 4 requires "correspondence between the company and the creditor(s) related to the loan(s)". Mr Moss said that this was required to check that the accounting records correctly reflected the nature of the transactions. Loans from these unidentified but unrelated parties make up the largest figure on its balance sheet, and there may also be a link with the cost of sales figure, which consists entirely of "interest payable". I agree with Mr Moss that the related correspondence is likely to shed further light on the nature of these transactions, and Item 4 is therefore reasonably required.

120. Items 7-10 relate to the loan to Symbio. Item 7 requires an explanation as to why Symbio owed Gold Nuts money; Item 8 requires "all invoices, contracts and correspondence" relating to the amount owed, and Item 9 requires details of any repayments made by Symbio within nine months of 31 December 2013, along with supporting documentation. Of those Items, part of Item 8 – the invoices and contracts – are statutory records. The other Items, and the rest of Item 8, are reasonably required, because the members of Symbio are also directors of Gold Nuts, and the information/documents will allow HMRC to check that these related party transactions have been correctly treated for tax purposes

121. Item 10 requires an explanation as to why the company does not consider that the loan is within CTA 2010, s 455. As originally drafted, that section provided that a further CT charge is triggered if a loan to a participator in a close company, or an associate of a participator, is not repaid within nine months of the year end. The provision was amended by FA 2013, s 79 and Sch 30 paras 1 and 3 to encompass loans made to LLPs after 20 March 2013, where one of the members of the LLP is also a participator (or an associate of a participator) of the company making the loan. Where all the members of the LLP are individuals, the unamended provision may apply to loans made before that date.

122. Mr Moss said he had requested Item 10 so he could understand the company's rationale for not declaring a charge under CTA 2010, s 455 on the amount owed by Symbio to Gold Nuts at the balance sheet date, given that Mr Hundal and Mr Budhdeo are both shareholders in Gold Nuts and are members of Symbio, and that Mr Mathew is also a member of that LLP. Mr Moss believed that it was reasonable to request this information.

123. In Sch 36, "information" is not defined. However, in my judgment it does not encompass opinions on points of law, including whether or not particular legal provisions apply to the facts of a taxpayer's case. The purpose of a Sch 36 Notice is to allow HMRC to access information and documents which are "reasonably required by the officer for the purpose of checking the taxpayer's tax position". It allows the HMRC officer to be provided with factual raw material, which he then uses to check the taxpayer's tax position. The officer carries out that check by applying the relevant legislation to all the facts, including those derived from the information and documents.

124. He can, of course, subsequently write to the taxpayer to ask why it has adopted a particular tax position. But that is part of the enquiry process; it is not part of the purpose of a Sch 36 Notice. It follows that it is not appropriate to include "an explanation as to why the company does not consider that the loan is within CTA 2010, s 455" in a Sch 36 Notice, and I therefore set Item 10 aside.

125. By Item 11, HMRC require an analysis of the Cost of Sales figure. That is a statutory record.

Gold Nuts: Closure Notice Application

126. HMRC submitted that, as no information/documents had been provided following the issuance of the Sch 36 Notice discussed above, and no information/documents had been provided following the issuance of an earlier Sch 36 Notice relating to the previous accounting period (see [305]ff of the Substantive Decision), there were reasonable grounds for not closing the enquiry into the 2013 accounting period.

127. I considered the case law on closure notices set out earlier in this decision. In *Bloomfield* Judge Blewitt took into account, "the fact that this enquiry has been ongoing for a significant period of time, the co-operation of the Appellant and the queries which remain outstanding". Here, the enquiry has been ongoing since December 2015, just over a year before the hearing of this appeal, but during that period the company did not co-operate with HMRC, but appealed the Sch 36 Notice and asked that the enquiry to be closed; none of HMRC's questions has been answered.

128. In *Stephen Price* the tribunal stated that "the statutory scheme is that HMRC are entitled to full disclosure of the relevant facts" and that Sch 36 Notices allow HMRC to do just that. Here, none of the Sch 36 Notices have been complied with, so the company has disclosed none of the facts about which HMRC have asked for further information and/or documents. If HMRC were required to close these enquiries now, they would be forced to make "best judgement" assessments without knowledge of the full facts. As the tribunal said in *Stephen Price*, requiring HMRC to close the enquiry would be "inappropriate and a waste of everybody's time".

129. HMRC's submission that the enquiry should remain open is therefore consistent with previous case law. I agree with HMRC, and refuse the company's application. The fact that one of the Items has been set aside does not change that conclusion.

There are still far too many uncertainties to make it appropriate either to direct the immediate closure of the enquiry, or to set a future date for closure.

Blackbay

Blackbay: facts

130. Blackbay's trade is pharmacy homecare and the wholesaling of pharmaceutical products. It is a wholly owned subsidiary of Gold Nuts. Its directors throughout the 2013 accounting period were Mr Budhdeo, Mr Hundal and Mr Mathew.

131. Its 2013 statutory accounts record that:

(1) turnover was £23,106k and cost of sales £21,641k, giving a gross profit of £1,465k. This was increased by "other income" of £1,077k, of which £1,050k was "management charges";

(2) after the deduction of various costs, the company made an operating loss of £660k. Those costs included "other finance charges" of £189k; "business process outsourcing" of £342k; management charges payable of £240k; business development expenses of £63k; legal costs relating to "supply of medicines/regulatory matters" of £72k, and "abortive software development" of £55k;

(3) The costs also included £512k for "professional fees" charged by Noviscom Limited, a company owned by Mr Budhdeo, Mr Sanjay Budhdeo, Mr Pravin Budhdeo and Mr Mathew;

(4) the comparative figure for "other debtors" on the balance sheet for 2012 included an amount of £189k owed by Mr Budhdeo's brother. Mr Sanjay Budhdeo, who had been a director of Blackbay during 2012. That amount is shown as having been repaid during 2013;

(5) the figure for "other debtors" on the balance sheet for 2013 was £782k, of which £426k was owed by Symbio; and

(6) Mr Budhdeo had a loan from the company of £379k, which was initially increased by a further £61k and then repaid in full; Mr Hundal's loan of £156k was initially increased by £34k and then repaid in full; Mr Mathew's loan of £83k was initially increased by £14k and then repaid in full.

Blackbay: Sch 36 Notice

132. The Sch 36 Notice requires that Blackbay provide 18 Items. Item 1 requires "fully annotated" copies of the directors' loan/current accounts with the company. These are statutory records.

133. Item 2 requires "full details of any sources for and dates of credits to" the directors' loan accounts, to demonstrate that they were repaid within the accounting period, supported by documentary evidence. HMRC submitted that it was reasonable to require information/documents about how the directors repaid these amounts, given that Gold Nuts' CT return states that the same individuals had also repaid significant sums to that company within nine months of that year end, namely £2,343k (Mr Budhdeo); £878k (Mr Hundal) and £266k (Mr Mathew), see §113(5) and §114. I

agree that it is reasonable to require the information/documents set out in Item 2, for the reasons given by HMRC.

134. Item 3 requires a fully annotated copy of Mr Sanjay Budhdeo's loan account. That too is a statutory record. Item 4 is "full details of any sources for and dates of credits to" his loan account, to demonstrate that the loan was repaid within the accounting period, supported by documentary evidence. I find that this Item is reasonably required, as it is relevant to Blackbay's tax position, see CTA 2010 s 445.

135. Items 5 and 6 require "a narrative to explain" the other finance charges, and "documentary evidence" to support them. These are statutory records.

136. Item 6-11 relate to "other debtors" and the fees charged by Noviscom. All but Item 10 are statutory records. Item 10 requires full details of the nature of the services provided by Noviscom and the commercial benefit of those services to Blackbay. Noviscom is owned by three of the four directors of Blackbay, and it is reasonable for HMRC to require that Blackbay provide explanations for these related party transactions.

137. Items 12-15 relate to Symbio. Items 12 and 14 are statutory records. Item 13 requires an explanation as to why Blackbay was owed money by Symbio. That Item is reasonably required, for the same reason as given in relation to Gold Nuts' loan to Symbio. Item 15 asks the same question about CTA 2010, s 455 as was asked in relation to Gold Nuts. That Item is set aside, again for the same reason as given above in relation to Gold Nuts.

138. Items 16-21 require invoices, documentation and explanations for the various costs set out at §131(2). These are all statutory records.

Blackbay: Closure Notice Application

139. HMRC submitted that, as no information/documents had been provided following the issuance of the Sch 36 Notice discussed above, and no information/documents had been provided following the issuance of three earlier Sch 36 Notices in relation to the 2010, 2011 and 2012 periods of account, and as its enquiries into those three years remained open, see the Substantive Decision at [211]ff, there were reasonable grounds for not closing the enquiry into the 2013 accounting period. I agree with HMRC for essentially the same reasons as set out above in relation to Gold Nuts.

Bronze Nuts

140. The issues to be determined by the Tribunal are the company's applications to close HMRC's enquiries into its accounting periods ending 21 June 2013 and 31 December 2013, and its appeal against the Sch 36 Notice issued in relation to the period ending 21 June 2013.

141. I find as facts that:

(1) the company's trade was the retail and wholesaling of pharmaceutical products;

(2) in the period to 21 June it sold its retail shop and ceased trading;

(3) its statutory accounts for 2013 state that the disposal of goodwill relating to the shop gave rise to a profit of £67,605; and

(4) the company made a rollover relief claim under CTA 2009, s 761 in relation to that profit.

142. The Sch 36 Notice requires the company to provide a copy of the sale agreement for the disposal of the shop. That contract is part of the books and records of the company, and so is a statutory record. I would also have found that the provision of that contract was reasonably required in the context of the company's CT return and its rollover relief claim.

Bronze Nuts: Closure Notice Application

143. HMRC submitted that, as the contract had not been provided following the issuance of the Sch 36 Notice; as no information/documents had been provided following the issuance of the earlier Sch 36 Notice in relation to the 2011 accounting period, and as the enquiries into the 2011 and 2012 periods of account remained open, see the Substantive Decision at [258]ff, there were reasonable grounds for not closing the enquiries into either of the 2013 accounting periods. I agree with HMRC for essentially the same reasons as set out in relation to Gold Nuts.

Corona

144. Corona is a property investment company. I find as facts that its statutory accounts for the year ended 31 December 2013 state:

(1) its turnover of £1,937k includes £1,785k derived from "property sales";

(2) it had "closing work in progress" of £495k;

(3) an amount of £80k, described as "other finance charges" was deducted from its profits; and

(4) its assets increased by £4,352k during the year as the result of the acquisition of an investment property.

145. I also find that the company's CT return includes additions to its capital allowances "general pool" of £136k and additions to its "special pool" of £571k, making a total of £707k.

146. The Sch 36 Notice contains 5 Items. The first requires details of the property sales, including the address of the property, the date of sale, the price for which it was sold and the name of the purchaser. As the company's business is property investment, that information is a statutory record.

147. Items 2 and 3 require details of the closing work in progress and of other finance charges, together with supporting documents; theses are statutory records.

148. Item 5 requires an analysis of how the £707k was arrived at, and Item 4 requires a copy of any capital allowances reports commissioned. I find that it is entirely

reasonable of HMRC to require (a) an analysis of the expenditure on which tax relief has been claimed, and (b) the provision of any reports which might underpin the values used in the claim.

Corona: Closure Notice Application

149. HMRC submitted that, as no information/documents had been provided following the issuance of the Sch 36 Notice discussed above, and the enquiry into the 2012 accounting period remained open, see the Substantive Decision at [282]ff, there were reasonable grounds for not closing the enquiry into the 2013 accounting period. I agree with HMRC, for the essentially the same reasons as set out in relation to Gold Nuts.

R Square

150. R Square is another property investment company. I find as facts that its 2013 statutory accounts state that:

(1) additions of £490k were made to investment property;

(2) turnover of £460k was reduced by administrative expenses of £310k and interest payable of £163k;

(3) professional fees of £158k are included in administrative expenses;

(4) creditors falling due after less than one year are £528k; this includes £183k of bank loans/overdrafts and £2k owed to group undertakings; and

(5) creditors falling due after more than one year are £3,260k, and £1,577k of that figure is owed to group undertakings, with the balance owed to banks.

151. I further find that the company's CT computation analyses the interest charge as between £59k as relating to bank loans, and the balance of £105k as relating to "other interest". That computation also includes a detailed schedule of professional fees, separating the £158k into 14 separate headings. Most of the figures are precise, such as "fees in respect of asbestos survey £335".

152. The Sch 36 Notice contains 5 Items. The first requires that the company provide "a detailed analysis to show how this figure [of £158k] was arrived at". When Mr Moss was giving evidence, I drew his attention to the detailed schedule in the company's CT return. Mr Moss said that there could be several payments underlying some or all of the 14 numbers on that schedule, and that HMRC also wanted to know to whom the money was paid, and what was on the invoices.

153. However, the Sch 36 Notice does not require the invoices relating to the schedule, it requires a schedule. I find that Item I is not reasonably required, because the company has already provided a schedule. HMRC can, of course, require that the company provide the related invoices: these are statutory records and so not appealable, but the Sch 36 Notice does not include that requirement. Item 1 is set aside.

154. Items 2 and 3 requires an analysis of the "other interest" figure and the related contracts/agreements. These are statutory records, and would in any event have been

reasonably required, as being an explanation of items on the face of the statutory accounts for which a tax deduction has been claimed.

155. Items 4 and 5 relate to the capital allowances on the additions, and I find that they are reasonably required for the same reason as Items 4 and 5 of the similar Items in the Sch 36 Notice issued to Corona.

R Square: Closure Notice Application

156. HMRC submitted that, as no information/documents had been provided following the issuance of the Sch 36 Notice discussed above, and no documents had been provided following the issuance of the earlier Sch 36 Notice in relation to the 2011 accounting period, and as the enquiries into 2011 and 2012 remained open, see the Substantive Decision at [334]ff, there were reasonable grounds for not closing the enquiry into the 2013 accounting period.

157. I agree with HMRC, and decline to direct the closure of the enquiry into the company's 2013 accounting period, for essentially the same reasons as set out in relation to Gold Nuts. The fact that one of the Items has been set aside does not change that conclusion. There are still far too many uncertainties to make it appropriate either to direct the immediate closure of the enquiry, or to set a future date for closure.

Venture Pharmacies

158. I find as facts that the statutory accounts of Venture Pharmacies for 2013 state that:

(1) turnover was £2.2m and administrative expenses £2.1m;

(2) expenses charged included:

(a) £897k payable to Eclipse Infotech Services (I) Pvt Ltd ("Eclipse"), a company registered in India. The directors and shareholders of Eclipse were Mr Budhdeo, Mr Hundal, Mr Mathew and Mr Pravin Budhdeo;

(b) motor expenses of £175k (compared to £23k the previous year);

(c) finance charges of £46k; and

(3) the balance sheet included a sum of £295k relating to "other debtors"; of this figure, £106k was owed by Eclipse and is described as a "deposit held with Indian company".

159. The Sch 36 Notice contained 8 Items. Items 1 and 2 require the invoices and contracts relating to the £897k payable to Eclipse; these are statutory records.

160. Item 3 requires "all contracts, agreements and correspondence" relating to the deposit, and Item 4 requires an explanation as to why the amount was held as a deposit. Of these, the contracts and agreements are statutory records. I find that the correspondence and the explanation are both reasonably required, because:

(1) the sum payable is large;

(2) paying a deposit to trading partners is relatively uncommon;

(3) the company's directors are also directors of Eclipse and three of the company's four ultimate shareholders (Mr Budhdeo, Mr Hundal and Mr Pravin Budhdeo) are shareholders in Eclipse, so these are transactions with a related party.

161. Items 5 to 7 require analyses of other debtors, motor expenses and finance costs. These are statutory records. Item 8 requires copies of invoices and contracts relating to the finance costs. These too are statutory records.

Venture Pharmacies: Closure Notice Application

162. HMRC submitted that, as no information/documents had been provided following the issuance of the Sch 36 Notice discussed above, and no information/documents had been provided following the issuance of three earlier Sch 36 Notices in relation to the 2010, 2011 and 2012 accounting periods, and as its enquiries into those three years remained open, see the Substantive Decision at [211]ff, there were reasonable grounds for not closing the enquiry into the 2013 accounting period.

163. I agree with HMRC, and decline to direct the closure of the enquiry into the company's 2013 accounting period, for essentially the same reasons as set out in relation to Gold Nuts.

PART 5: OVERALL DECISION AND APPEAL RIGHTS

Overall decision

164. To the extent that the Items listed in the Sch 36 Notices are statutory records, they were not in any event appealable to the Tribunal, and what follows does not apply to those Items.

165. I have upheld all Items which were under appeal, with the exception of the following, which I have set aside:

(1) Item 10 in the Sch 36 Notice issued to Gold Nuts;

(2) Item 15 in the Sch 36 Notice issued to Blackbay; and

(3) Item 1 in the Sch 36 Notice issued to R Square.

166. I direct in accordance with Sch 36, para 32(4)(a) that the Appellants comply with the Sch 36 Notices within 30 days from the date of issue of this decision, other than in relation to the three Items set out in the previous paragraph.

167. I decline to direct the closure of HMRC's enquiries into any of the six companies.

Full decision and appeal rights

168. This document contains full findings of fact and reasons for the decisions.

169. There is no right of appeal against the decisions on the Sch 36 Notices, see Sch 36, para 32(5).

170. The Appellants have a right to apply for permission to appeal against the refusal to direct the closure of the enquiries, under Rule 39 of the Tribunal Rules. Any such 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.

ANNE REDSTON
TRIBUNAL JUDGE

RELEASE DATE: 25 APRIL 2017

APPENDIX

VALUE ADDED TAXES ACT 1994, SCHEDULE 11

6. Duty to keep records

(1) Every taxable person shall keep such records as the Commissioners may by regulations require...

(2) Regulations under sub-paragraph (1) above may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.

(3) The Commissioners may require any records kept in pursuance of this paragraph to be preserved for such period not exceeding 6 years as they may specify in writing (and different periods may be specified for different cases)

(4) The duty under this paragraph to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Commissioners for Her Majesty's Revenue and Customs.

VAT REGULATIONS 1995

31. Records

(1) Every taxable person shall, for the purpose of accounting for VAT, keep the following records—

(a) his business and accounting records,

(b) his VAT account,

(c) copies of all VAT invoices issued by him,

(d) all VAT invoices received by him

(da) all certificates

(i) prepared by him relating to acquisitions by him of goods from other member States, or

(ii) given to him relating to supplies by him of goods or services,

provided that, owing to provisions in force which concern fiscal or other warehousing regimes, those acquisitions or supplies are either zero-rated or treated for the purposes of the Act as taking place outside the United Kingdom,

(e) documentation received by him relating to acquisitions by him of any goods from other member States,

(f) copy documentation issued by him relating to the transfer, dispatch or transportation of goods by him to other member States,

(g) documentation received by him relating to the transfer, dispatch or transportation of goods by him to other member States,

(h) documentation relating to importations and exportations by him, and

(i) all credit notes, debit notes, or other documents which evidence an increase or decrease in consideration that are received, and copies of all such documents that are issued by him…

(2) The Commissioners may

(a) in relation to a trade or business of a description specified by them, or

(b) for the purposes of any scheme established by, or under, Regulations made under the Act,

supplement the list of records required in paragraph (1) above by a notice published by them for that purpose.

FINANCE ACT 1998, SCHEDULE 18

21. Duty to keep and preserve records

(1) 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

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

(2) The records must be preserved until the end of the relevant day.

(2A) In this paragraph "relevant day" means

(a) the sixth anniversary of the end of the period for which the company may be required to deliver a company tax return, or

(b) such earlier day as may be specified in writing by the Commissioners for Her Majesty's Revenue and Customs (and different days may be specified for different cases).

(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 later date on which

(a) any enquiry into the return is completed, or

(b) if there is no enquiry, an officer of Revenue and Customs no longer has power to enquire into the return.

(4) …

(5) The records required to be kept and preserved under this paragraph include records of

(a) all receipts and expenses in the course of the company's activities, and the matters in respect of which the receipts and expenses arise, and

(b) in the case of a trade involving dealing in goods, all sales and purchases made in the course of the trade.

(5A) The Commissioners for Her Majesty's Revenue and Customs may by regulations

(a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and

(b) provide that those records include supporting documents so specified.

(5B) Regulations under this paragraph may

(a) make different provision for different cases, and

(b) make provision by reference to things specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs in accordance with the regulations (and not withdrawn by a subsequent notice).

"Supporting documents" includes accounts, books, deeds, contracts, vouchers and receipts.

....

24. Notice of enquiry

(1) An officer of Revenue and Customs may enquire into a company tax return if they give notice to the company of their intention to do so ("notice of enquiry") within the time allowed.

(2) If the return was delivered on or before the filing date, notice of enquiry may be given at any time up to twelve months from the day on which the return was delivered (subject to sub-paragraph (6)).

(3) If the return was delivered after the filing date, notice of enquiry may be given at any time up to and including the 31st January, 30th April, 31st July or 31st October next following the first anniversary of the day on which the return was delivered.

(4) If the company amends its return, notice of enquiry may be given at any time up to and including the 31st January, 30th April, 31st July or 31st October next following the first anniversary of the day on which the amendment was made.

(5) A return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) by the company of its return.

6) In the case of a company which is a member of a group other than a small group, the 12-month period in sub-paragraph (2) shall start not from the day on which the return was delivered but from the filing date.

(7) In sub-paragraph (6) "group" and "small group" have the same meaning as in sections 474(1) and 383 of the Companies Act 2006.

25. Scope of enquiry

(1) An enquiry into a company tax return extends to anything contained in the return, or required to be contained in the return, including

(a) any claim or election included in the return,

(b) any amount that affects or may affect

(i) the tax payable by that company for another accounting period, or

(ii) the tax liability of another company for any accounting period,

and also extends to consideration of whether to give the company [a notice within sub-paragraph (3).

(2) …

(3) A notice is within this sub-paragraph if it is

(a) a notice under section 184G or 184H of the Taxation of Chargeable Gains Act 1992 (avoidance involving capital losses),

(b) a notice under section 81(2) of TIOPA 2010 (schemes and arrangements designed to increase relief),

(c) a transfer pricing notice under section 168(1) of TIOPA 2010 (provision not at arm's length: medium-sized enterprise), or

(d) a notice under section 232 or 249 of TIOPA 2010 (avoidance involving tax arbitrage)

....

33. Direction to complete enquiry

(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) Any such application is to be subject to the relevant provisions of Part 5 of the Taxes Management Act 1970 (see, in particular, section 48(2)(b) of that Act).

(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.

FINANCE ACT 2008, SCHEDULE 36

1. Power to obtain information and documents from taxpayer

(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.

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

....

6. Notices

(1) In this Schedule, "information notice" means a notice under paragraph 1, 2 or 5.

(2) An information notice may specify or describe the information or documents to be provided or produced.

7. Complying with notices

(1) Where a person is required by an information notice to provide information or produce a document, the person must do so—

(a) within such period, and

(b) at such time, by such means and in such form (if any),

as is reasonably specified or described in the notice.

(2) Where an information notice requires a person to produce a document, it must be produced for inspection

(a) at a place agreed to by that person and an officer of Revenue and Customs, or

(b) at such place as an officer of Revenue and Customs may reasonably specify…

…

18. Documents not in a person's possession or power

An information notice only requires a person to produce a document if it is in the person's possession or power.

…

21. Taxpayer notices following tax return

(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period.

(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.

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

(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 an officer of Revenue and Customs has reason to suspect that, as regards the person,—

(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).

(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.

....

29. Right to appeal against taxpayer notice

(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.

....

32. Procedure

(1) Notice of an appeal under this Part of this Schedule must be given—

(a) in writing,

(b) before the end of the period of 30 days beginning with the date on which the information notice is given, and

(c) to the officer of Revenue and Customs by whom the information notice was given.

(2) Notice of an appeal under this Part of this Schedule must state the grounds of appeal.

(3) On an appeal that is notified to the tribunal, the tribunal may—

(a) confirm the information notice or a requirement in the information notice,

(b) vary the information notice or such a requirement, or

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

(4) Where the tribunal confirms or varies the information 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 an officer of Revenue and Customs following the tribunal's decision.

(5) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 a decision of the tribunal on an appeal under this Part of this Schedule is final.

(6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

….

58. General Interpretation

In this Schedule—

"document" includes a part of a document (except where the context otherwise requires),

"enactment" includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c 30))...

"the Taxes Acts" means—

(a) TMA 1970,

(b) the Tax Acts, and

(c) TCGA 1992 and all other enactments relating to capital gains tax...

…

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—

(a) the Taxes Acts, or

(b) any other enactment relating to a tax,

subject to the following provisions of this paragraph.

(2) To the extent that any information or document that is required to be kept and preserved under or by virtue of the Taxes Acts—

(a) does not relate to the carrying on of a business, and

(b) is not also required to be kept or preserved under or by virtue of [any other enactment relating to a tax,

it only forms part of a person's statutory records to the extent that the chargeable period or periods to which it relates has or have ended.

(3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired.

63. Tax

(1) In this Schedule, except where the context otherwise requires, "tax" means all or any of the following—

(a) income tax,

(b) capital gains tax,

(c) corporation tax….

and references to "a tax" are to be interpreted accordingly…

CORPORATION TAXES ACT 2010

455 Charge to tax in case of loan to participator

(1) This section applies if a close company makes a loan or advances money to--

(a) a relevant person who is a participator in the company or an associate of such a participator,

(b) the trustees of a settlement one or more of the trustees or actual or potential beneficiaries of which is a participator in the company or an associate of such a participator, or

(c) a limited liability partnership or other partnership one or more of the partners in which is an individual who is--

(i) a participator in the company, or

(ii) an associate of an individual who is such a participator[1].

(2) There is due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to 25% of the amount of the loan or advance[2].

(3) Tax due under this section in relation to a loan or advance is due and payable in accordance with section 59D of TMA 1970 on the day following the end of the period of 9 months from the end of the accounting period in which the loan or advance was made.

(4)-(5) …

(6) In this Chapter, "relevant person" means--

(a) an individual, or

(b) a company receiving a loan or advance in a fiduciary or representative capacity.

[1] This subsection previously read "This section applies if a close company makes a loan or advances money to a relevant person who is a participator in the company or an associate of such a participator". As stated in the main body of this decision, the subsection was amended by FA 2013, s 79 and Sch 30 paras 1 and 3 for loans made on or after 20 March 2013.

[2] This subsection was amended for loans made on or after 6 April 2016; that change is not relevant to this decision.