Neutral Citation: [2024] UKFTT 00705 (TC)

Case Number: TC09252

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/07638

INCOME TAX AND CAPITAL GAINS TAX – Taxpayer information notice – Schedule 36 to the Finance Act 2008 – Statutory records – Whether HMRC officer had reason to suspect that tax had been underassessed – Whether information and documents reasonably required to check tax position – Information notice varied

Heard on: 15 April 2024
Judgment date: 25 July 2024

Before

TRIBUNAL JUDGE RACHEL GAUKE

Between

FURLONG SERVICES LTD

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Geraint Jones KC, instructed by Rainer Hughes LLP

For the Respondents: Amy Cook, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. Furlong Services Ltd ("Furlong") appeals against an information notice (the "Notice") issued by HMRC under Schedule 36 of the Finance Act 2008 ("FA 2008") on 1 December 2022 and varied by HMRC on review on 16 March 2023.

2. I have varied some of the items in the Notice and confirmed others. An amended version of the Notice, reflecting my variations, is set out in the Appendix to this decision.

HEARING AND EVIDENCE

3. The hearing was conducted by video link on the tribunal's Video Hearing Service. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely to observe the proceedings. As such, the hearing was held in public.

4. The documents to which I was referred were a 655-page hearing bundle, an appellant's supplemental bundle of 16 pages, Furlong's revised grounds of appeal, and both parties' skeleton arguments. The hearing bundle included a witness statement from Officer Ashley Jones. Officer Jones attended the hearing and was cross-examined.

5. As described below, there were post-hearing directions in this case followed by written closing submissions, the last of which was received by the Tribunal on 12 June 2024.

6. In this decision I refer to HMRC's Officer Ashley Jones as Officer Jones, and to Mr Geraint Jones KC (who appeared before me for the Appellant) as Mr Jones.

CASE MANAGEMENT ISSUES

7. The following case management issues arose.

The Tribunal panel

8. The case had been listed to be heard by a judge and a member. However, the member was unable to join the online hearing due to technical difficulties.

9. I noted that under the Practice Statement dated 10 March 2009 relating to the composition of the Tax Tribunals, there is no requirement for the Tribunal panel to include a member as well as a judge. I heard representations from the parties as to whether I should hear the case on my own or adjourn so that it could be re-listed with a reconstituted panel.

10. Mrs Cook objected to the case being adjourned. She said there was no reason for me not to hear the case on my own and that both parties were assembled for the hearing and were ready to proceed.

11. Mr Jones, after taking instructions, said that his client wanted to proceed with the hearing to avoid further delay. However, the case involved a dispute about the veracity of HMRC's witness and, according to Mr Jones, the evidence would benefit from being assessed by a Tribunal member as well as a judge. Mr Jones said that therefore on balance it would be right to adjourn.

12. I took into consideration that Tribunal resources had already been allocated to arrange this hearing, and that both parties had attended, along with HMRC's witness, and were prepared to present their respective cases on that day. While the Tribunal member may have brought useful insights and experience, I balanced this against these other factors and

concluded that, in the context of an appeal against an information notice, it would not be proportionate to adjourn.

13. I therefore proceeded to hear and decide the case sitting alone.

Witness statement of Mr Foreman

14. The cross-examination of Officer Jones involved detailed discussion of certain pages of Furlong's final statutory accounts and corporation tax computations. At the end of the hearing Mr Jones said that he would take instructions as to whether to request permission to adduce additional evidence on the accounting issues that had arisen in the hearing.

15. In accordance with directions which I issued at the end of the hearing, Mr Jones subsequently submitted a witness statement by Mr Gary Foreman, a chartered accountant of Nash Harvey Group LLP, together with an application to adduce that statement by way of additional evidence. Mrs Cook submitted a written objection to the application, together with a list of authorities to support her objection. Mr Jones then submitted a written response to HMRC's objection.

16. There had not been time, during the hearing, to hear the parties' closing submissions. Having received Mr Foreman's witness statement and the parties' related submissions, I issued further directions permitting the statement to be lodged with the Tribunal *de bene esse*, and informing the parties that I would rule on its admissibility in my decision. The parties were directed to present their closing submissions on this basis.

17. I reviewed Mr Foreman's witness statement. I found much of it to consist of submissions and opinions about what Officer Jones said in cross-examination. Mr Foreman also made statements about whether the accounts and computations had been drawn up in accordance with the law and relevant accounting standards, which was not a matter I understood to be in dispute. As such I found the statement to be of limited utility.

18. I have taken Mr Foreman's witness statement into account and derived some limited assistance from it but, as will be seen below, it was only relevant to questions which I have decided in HMRC's favour. This means that HMRC have not been prejudiced by my taking the witness statement into account, nor by their inability to cross-examine Mr Foreman.

19. Mrs Cook, in her objection, submitted that if I were minded to admit Mr Foreman's evidence as a witness of fact, I should reconvene a hearing to permit cross-examination, and if I were minded to admit expert evidence, I should issue further directions regarding Mr Foreman's suitability as an expert witness. However, given that I found the statement to be of limited utility, and given the lack of prejudice to HMRC, I decided that these courses of action would be disproportionate.

BURDEN OF PROOF

20. The burden of proof rests on HMRC to show that the Notice was validly issued and that the requirements of FA 2008, Sch 36 have been met. HMRC accepted that the burden of proving that the items requested by the Notice are reasonably required for the purpose of checking Furlong's tax position also rests with them.

21. HMRC also bear the burden of showing that any information or documents requested by the Notice are statutory records in relation to which there is no ability to bring an appeal.

22. The standard of proof is the normal civil standard of the balance of probabilities.

FINDINGS OF FACT

23. Furlong was incorporated on 9 March 2016. Mr Mark Curtis is its sole director. Furlong's accounts for the period ending 31 March 2017 state that "the principal activity of the company is that of farming". The company's first accounting period covered the period from incorporation, on 9 March 2016, to 31 March 2017.

24. Furlong's tax computations for the period ending 31 March 2017 contain multiple references to farming, and none to football or consultancy. These computations include entries under the following headings:

(1) Farming – Adjusted trading result

(2) Farming – Losses – AP to 31/03/2017

(3) Farming – Disallowable and other expenses

(4) Farming – Plant and machinery: Main pool

(5) Farming – Fixed asset additions

25. There are further references to farming in addition to these headings. Under the heading "AIA allocation" the sole entry is "Farming – Main Pool". Under the heading "Losses summary – AP to 31/03/2017" the sole entry is "UK trade: Farming". Under the heading "Balance sheet summary of additions" the sole entry is "Farming – Plant and machinery etc".

26. There are no corresponding headings or entries in these computations which refer to football or consultancy.

27. Furlong's tax computations for the periods ending 31 March 2018 and 30 September 2019 are similar to those for the period ending 31 March 2017 in that they, too, contain multiple references to farming, and none to football or consultancy.

28. Furlong's final statutory accounts for the period ending 31 March 2018 show that it made a profit in that period. Furlong's tax computations for the same period (ending 31 March 2018) show that it brought forward a loss from the previous period, but this loss was not used to reduce the profit.

29. Furlong's accounts for the period ending 30 September 2019 record that the company extended its year end from March 2019 to September 2019. This period therefore ran from 1 April 2018 to 30 September 2019.

30. Furlong's tax computations for the period ending 30 September 2019 show that £14,425 of farming losses brought forward from the period ending 31 March 2017 were utilised by Furlong to reduce its taxable profits in that period.

31. In a letter dated 28 December 2022 (after the issue of the Notice), Furlong's advisers accepted that there was an error in the loss relief claim for the period ending 30 September 2019, and that this should instead have been a claim for a carry back of losses from the period ending on 30 September 2020.

HMRC's investigations into the tax affairs of Mr Curtis

32. The background to the issue of the Notice was an investigation by HMRC into Mr Curtis's tax affairs.

33. On 27 September 2018, HMRC opened an enquiry into Mr Curtis's tax return for the tax year 2016-17, and requested certain information and documents. Mr Curtis's advisers responded on 5 November 2018, in a letter which included the following:

> "Mr Curtis was a director of Select Management Limited, a company registered in Gibraltar. Mr Curtis was also a director of Furlong Services Limited, a company registered in England (No: 10051696). Mr Curtis carried out the duties of director of each company, the trade of which was agency representation of sportsmen. The duties were carried out all over the world depending on where the players were based."

34. The enquiry continued over the following years, and on 31 May 2022 Mr Curtis applied to the Tribunal for a direction requiring HMRC to issue a closure notice.

35. In a letter dated 10 June 2022, HMRC stated that they had concerns that a disposal by Mr Curtis of shares in Select Management Ltd ("SML") on 7 April 2016 was connected with arrangements to convert income into a capital gain.

36. Officer Jones became involved in the investigation on 20 July 2022. On this date he wrote to Mr Curtis to inform him that that he had been registered for investigation by HMRC's Fraud Investigation Service, and that the enquiries into his tax affairs would be conducted under HMRC's Code of Practice 8. In the letter, Officer Jones said that the investigation would mainly concern the disposal of the shares in SML and the consultancy income Mr Curtis had received since that disposal.

37. On the same date (20 July 2022), Officer Jones issued Mr Curtis with an information notice, as he did not believe that satisfactory responses had been received to previous requests for information and documents.

38. On 15 August 2022, at HMRC's request, a face-to-face meeting took place between HMRC (Officer Jones and a colleague), and Mr Curtis and his advisers (including Mr Jones and Mr Foreman). I had HMRC's note of this meeting. At the meeting, Officer Jones informed Mr Curtis that he had some questions regarding his tax affairs, including in relation to the share disposal. Mr Jones said, at the meeting, that he was advising Mr Curtis to request that all such questions be put in writing.

39. On 25 August 2022, Officer Jones wrote to Mr Curtis's agent highlighting the items he believed to be outstanding from the information notice dated 20 July 2022. This included a request for "details of all consultancy work carried out by yourself [ie Mr Curtis] following the disposal of the SML shares".

40. On 23 September 2022, Mr Curtis's agent replied to Officer Jones, and in response to the question about consultancy work stated:

> "Consultancy work under the consultancy agreement was completed by Furlong Services Ltd (FSL), acting by its personnel (usually our client). In the relevant fiscal year FSL was paid £50,000 on 22 April 2016; and £50,000 on 31 May 2016."

41. It is clear from the context, and it was not disputed, that the consultancy work in question was connected with football.

42. Officer Jones wrote again to Mr Curtis on 20 October 2022. Officer Jones said that he had previously been provided with a consultancy agreement dated 7 April 2016 entered into between Mr Curtis and SML, which specified remuneration of £100,000. Officer Jones believed that the two payments of £50,000 referred to in the letter of 23 September 2022 (in the extract quoted above) were made under that consultancy agreement. According to the agreement, this amount was due to Mr Curtis, not Furlong, and so Officer Jones believed Mr Curtis should have declared that amount as income in his tax return. In the same letter, Officer Jones stated that he wished to clarify whether similar payments for football consultancy had been made to Furlong for work completed by Mr Curtis in subsequent years.

43. Mr Curtis's advisers responded to Officer Jones on 22 November 2022. Their letter stated that the consultancy agreement dated 7 April 2016 between Mr Curtis and SML had subsequently been novated to Furlong, and so it was Furlong which had received the consideration due under that agreement.

44. HMRC issued assessments to Mr Curtis on 18 April 2023, and on 19 April 2023 they issued a closure notice in respect of the enquiry into his tax return for the year 2016-17.

The issue of the Notice

45. On 20 October 2022, Officer Jones wrote to Furlong saying that it had been registered for investigation by HMRC's Fraud Investigation Service, and that the enquiries into its tax affairs would be conducted under HMRC's Code of Practice 8.

46. Officer Jones issued the Notice on 1 December 2022. Furlong appealed against the Notice on 28 December 2022. Officer Jones issued his "view of the matter" letter on 10 January 2023. He removed some of the items from the Notice and offered a review of his decision that the remaining items were reasonably required to check Furlong's tax position. Furlong's agent accepted the offer of a review. HMRC issued a review conclusion letter on 16 March 2023, removing further items from the Notice but requiring production of the items that remained. Furlong appealed to the Tribunal on 13 April 2023.

ITEMS REQUESTED IN THE INFORMATION NOTICE

47. Furlong disputed all the items requested in the Notice. Following variation on review, the outstanding information and documents requested by HMRC in the Notice are as follows. The deletion of certain items on review means that the numbering is no longer consecutive, but I have retained the original numbering as this was the basis on which the parties presented their submissions.

> **Item 1**
>
> A breakdown of the income declared by Furlong in its accounts for each of the periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021 splitting the income based on its sources (e.g. income from farming, income from football etc).
>
> **Item 2**
>
> Additional details of income relating to the football industry that Furlong has received over the last six years. This should include a breakdown of the football income, including who the work was completed for and the amount of income.
>
> **Item 4**
>
> For the period ended 30 September 2019, details of the travelling expenses totalling £66,854. This should include the date expenditure was incurred and its value as well as an explanation of the business purpose.
>
> **Item 5**
>
> Copies of all consultancy agreements drawn up between Furlong and other parties for work to be completed relating to the football industry.
>
> **Item 7**
>
> Invoices for the travelling expenditure incurred during the period ending 30 September 2019.

RELEVANT LAW

48. HMRC's powers to issue an information notice are found in FA 2008, Sch 36. In the case of an information notice issued to a taxpayer in relation to their own tax affairs, the starting point is FA 2008, Sch 36, para 1, which at the time of the issue of the Notice provided, so far as relevant:

> "**1** (1) An officer of Revenue and Customs may by notice in writing require a person ("the taxpayer")—
>
> (a) to provide information, or
>
> (b) to produce a document,
>
> if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position or for the purpose of collecting a tax debt of the taxpayer.
>
> (2) In this Schedule, "taxpayer notice" means a notice under this paragraph."

49. The following legislative definitions apply:

> **"58**. In this Schedule—
>
> "checking" includes carrying out an investigation or enquiry of any kind
>
> […]
>
> **64** (1) In this Schedule, except as otherwise provided, "tax position", in relation to a person, means the person's position as regards any tax, including the person's position as regards—
>
> (a) past, present and future liability to pay any tax…"

50. HMRC's powers to issue an information notice are subject to certain restrictions. Those which are relevant to this appeal are as follows:

> **"20**. An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer. […]
>
> **21** (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 so far as relating to the matters to which the taxpayer notice relates.
>
> (5) In sub-paragraph (4), "notice of enquiry" means a notice under—

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

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

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

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

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

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

[…]

59. A reference in a provision of this Schedule to an authorised officer of Revenue and Customs is a reference to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purpose of that provision."

51. A taxpayer who receives an information notice may appeal against it, but may not appeal against a requirement to produce statutory records. The relevant provisions of FA 2008, Sch 36 are set out below:

"29 (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 (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.

[…]

62 (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 […]

(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…"

52. The "Taxes Acts" are defined, in FA 2008, Sch 36, para 58, to include "the Tax Acts". The Tax Acts are defined in the Interpretation Act 1978 to include the Corporation Tax Acts. The Corporation Tax Acts are defined in the same Act to mean enactments relating to the taxation of the income and chargeable gains of companies. Schedule 18 to the Finance Act 1998 ("FA 1998") deals with the taxation of the income and chargeable gains of companies, and is therefore a Taxes Act.

53. FA 1998, Sch 18, para 21 relevantly provides as follows:

"**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 His 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. […]

(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."

54. Section 45 of the Corporation Tax Act 2010 ("CTA 2010") relevantly provides as follows:

"**45 Carry forward of pre-1 April 2017 trade loss against subsequent trade profits**

(1) This section applies if, in an accounting period beginning before 1 April 2017, a company carrying on a trade makes a loss in the trade.

(2) Relief for the loss is given to the company under this section.

(3) The relief is given for that part of the loss for which no relief is given under section 37 or 42 ("the unrelieved loss").

(4) For this purpose—

(*a*) the unrelieved loss is carried forward to subsequent accounting periods (so long as the company continues to carry on the trade), and

(*b*) the profits of the trade of any such period are reduced by the unrelieved loss so far as that loss is not used under this paragraph to reduce the profits of an earlier period.

(4A) But the company may make a claim that the profits of the trade of an accounting period specified in the claim are not to be reduced by the unrelieved loss, or are not to be reduced by the unrelieved loss by more than an amount specified in the claim. [..]"

DISCUSSION

55. Furlong's grounds of appeal can be summarised as follows.

(1) The information and documents requested by the Notice were not reasonably required for the purpose of checking Furlong's tax position.

(2) HMRC have not identified a "reason to suspect" an understatement of tax as required by Condition B in FA 2008, Sch 36, para 21(6).

(3) HMRC applied the wrong test by maintaining that the information or documents requested by the Notice were reasonably required to "check" Furlong's tax position, instead of whether HMRC has "reason to suspect" an understatement of tax.

(4) The Notice was not issued in good faith. It was not intended to further a proper investigation into Furlong's tax affairs but was instead a fishing expedition designed to bolster HMRC's hypothesis that Mr Curtis had received undeclared football consultancy income in the tax year 2016-17.

(5) There is no open enquiry into a tax return submitted by Furlong so as to engage Condition A in FA 2008, Sch 36, para 21(4). The Notice is a belated attempt to open an enquiry outside the statutory time limits.

(6) HMRC are wrong to classify certain documents required by the Notice as statutory records.

Statutory records

56. HMRC submitted that Items 1, 2 and 4 are statutory records, and that Furlong therefore has no right of appeal in respect of those items.

57. As set out above, under FA 2008, Sch 36, para 62, information or documents form part of a person's statutory records if that person is required under the Taxes Acts to keep and preserve those information or documents, but they cease to be statutory records on the expiry of the period for which they are required to be preserved.

58. FA 1998, Sch 18, para 21(2A) provides that records must be preserved until the end of the "relevant day", which (unless HMRC specifies an earlier date) is defined as the sixth anniversary of the end of the period for which the company may be required to deliver a tax return. HMRC submitted that Items 1, 2 and 4 fall within this six-year period.

59. I respectfully agree with the decision of this Tribunal in *Sarah Duncan v HMRC* [2018] UKFTT 296 (TC) at [28] (Judge Redston and Toby Simon), for the reasons given by the Tribunal in that case, that the time limits in the statutory records provisions continue to run and are not frozen at the date of the issue of the Notice.

60. The sixth anniversary of the end of Furlong's accounting period ending on 31 March 2017 was 31 March 2023, and the sixth anniversary of the end of the accounting period ending on 31 March 2018 was 31 March 2024. These dates have now passed.

61. HMRC did not submit that there was an open enquiry into any of the tax returns for the periods to which the Notice relates, and I had no submissions or evidence as to whether Furlong had been given notices to file tax returns for the relevant periods, or on what dates. This means I am unable to find that HMRC is still within the alternative time limits set out in FA 1998, Sch 18, paras 21(3) and 21(4).

62. I therefore find that any records which were required to be preserved to enable Furlong to prepare tax returns for the periods ending 31 March 2017 and 31 March 2018 have ceased to be statutory records. This is relevant to some of the information and documents requested in Items 1, 2 and 5.

63. For guidance on the meaning of a statutory record, Mrs Cook referred me to the decision of this Tribunal in *Metropolitan International Schools* [2021] UKFTT 438 (TC) (Judge Gething and Sonia Gable). In that decision the Tribunal said at [25]:

> "It seems to us logical that as Statutory Records are those necessary to prepare a complete and correct tax return, they will assist in a check of the tax return. As HMRC will be unaware of the precise form of the records a taxpayer has used to prepare the return, a generic description of records to check particular issues in a return should be sufficient to discharge HMRC's burden to identify the category of information or document required."

64. Mrs Cook also referred me to the decision of this Tribunal in *Joshy Mathew* [2015] UKFTT 139 (TC) (Judge Redston and Helen Myerscough) ("*Mathew*"), in which it was stated at [55] that:

> "We therefore find that information does not necessarily have to be set down in writing before it can be a "record" and that therefore "information" as well as "documents" comes within TMA s 12B."

65. TMA s 12B requires taxpayers who are not companies to preserve certain records for the purposes of preparing tax returns, and is similar in terms to FA 1998, Sch 18, para 21.

66. I accept Mrs Cook's submission that, for the reasons given by the Tribunal in *Mathew*, the definition of statutory records is not limited to documents that are already in existence at the date of issue of an information notice, but also extends to "information".

67. Mr Jones submitted that when deciding what is meant by a statutory record, it is necessary to read FA 2008, Sch 36, para 29 in the light of in FA 2008, Sch 36, para 21. According to Mr Jones, this means that while there is no right of appeal in respect of statutory records, this only applies to the extent that those records relate to the chargeable period for which HMRC have identified a potential underassessment of tax. Moreover, Mr Jones submitted that the requested statutory records must be germane to the potential

underassessment, otherwise HMRC could request records about anything at all, driving a coach and horses through the statutory scheme.

68. I note that this Tribunal has previously considered the question of whether the definition of statutory records should be limited by reference to the subject matter of HMRC's investigations. In *New Way Cleaning Ltd* [2017] UKFTT 293 (TC) (Judge Brannan), the Tribunal agreed with the following statement in an earlier decision of the Tribunal in *Jonathon Beckwith* [2012] UKFTT 181 (TC) (Judge Redston and Anthony Hughes) at [57]:

> "The definition of statutory records in Sch 36 means that if a taxpayer is required by any statutory provision relating to tax to keep a document, then that document is a "statutory record". There is no necessary link between the tax which is under enquiry, and the source of the obligation to keep the records for tax purposes. So, for example, if a document is required to be kept by VATA, then it is a "statutory record" for the purposes of Sch 36, even if the Notice relates to documents required for an enquiry into the individual's self-assessment return."

69. While these decisions are not binding on me, I respectfully agree with them. In issuing an information notice, HMRC's powers are as set out in FA 2008, Sch 36, and are limited by, amongst other provisions, the restrictions in paragraph 21 of that schedule, but to the extent that the notice requires the production of statutory records, there is no right of appeal. The definition of statutory records is, as set out above, in FA 2008, Sch 36, para 62, which in this case brings in the provisions of FA 1998, Sch 18, para 21.

70. As my findings above demonstrate, this definition effectively has a built-in time limit, in the sense that information or documents cease to be statutory records when the period for which they are required to be preserved has expired. I do not accept that I am required to put an additional gloss on this definition by reading in a limitation by reference to the subject matter of HMRC's investigations.

71. I have applied these principles below in deciding whether each of the required Items is a statutory record.

Reasonably required

72. HMRC may only issue an information notice if the information or documents are "reasonably required" for the purpose of checking the taxpayer's tax position.

73. Mr Jones submitted, and I accept, that this places a greater burden on HMRC than that which is required to open an enquiry into Furlong's tax returns, in the sense that opening an enquiry does not require HMRC to show that information or documents are reasonably required.

74. In this context I note the guidance provided by Simler J in *R (oao Derrin Brother Properties Ltd) v HMRC* [2014] EWHC 1152 (Admin) ("*Derrin*") at [20]:

> "Finally, HMRC may not use their Sch.36 powers for a fishing expedition – whether for their own or the purposes of another revenue authority. A broadly-drafted request will not be valid if in reality HMRC are saying "can we have all available documents because they form so large a class of documents that we are bound to find something useful". What is required is that the request is genuinely directed to the purpose for which the notice may be given, namely to secure the production of documents reasonably required

> for carrying out an investigation or enquiry of any kind into another taxpayer's tax position."

75. *Derrin* concerned a third party notice issued under FA 2008, Sch 36, para 2 (hence the reference to "another taxpayer's tax position"), but this guidance also applies to taxpayer notices issued, as in the current case, under FA 2008, Sch 36, para 1. I have kept this guidance in mind in deciding whether the Items are reasonably required to check Furlong's tax position.

76. Mr Jones submitted that the Items in the Notice were not reasonably required because they had not been requested in good faith. On this point, Mr Jones submitted that Officer Jones was motivated by personal resentment against Mr Curtis or his advisers. According to Mr Jones, the Notice was not part of a genuine investigation into Furlong's tax position, but was instead directed at obtaining more information about the potential tax liabilities of Mr Curtis.

77. As I understood it, the submission about personal resentment was founded on the events surrounding the meeting on 15 August 2022, at which the attendees included Officer Jones, Mr Curtis, Mr Jones and Mr Foreman. In cross-examination, Mr Jones put to Officer Jones that he (Officer Jones) left that meeting feeling annoyed because he had made a significant journey and came away empty handed, because Mr Curtis had requested that he put his requests for information in writing. Officer Jones said that he did not feel resentment towards Mr Curtis and that it was not uncommon for him to be asked to put his questions in writing.

78. On the question of good faith, Mrs Cook referred me to the judgment of the High Court in *Kotton v First Tier Tribunal (Tax Chamber)* [2019] EWHV 1327 (Admin), in which Simler J said at [60]:

> "Thus, provided there is a genuine and legitimate investigation or enquiry of any kind into the tax position of a taxpayer that is neither irrational nor in bad faith, that is sufficient. The challenge is not to the lawfulness of the investigation, but is limited to the rationality of the conclusion that the information/documents are reasonably required for checking the taxpayer's tax."

79. I find that the investigation was not irrational or in bad faith. I found Officer Jones to be a credible and reliable witness. The evidence he gave, including under detailed cross-examination, was consistent and clearly expressed, and I found his explanation as to why he had issued the Notice to be rational and well-reasoned. I find that Officer Jones's investigation into Furlong's tax affairs was not motivated by personal resentment towards Mr Curtis or his advisers. Officer Jones may have felt some annoyance after the meeting on 15 August 2022, but this would not warrant a finding that the investigation was irrational or in bad faith.

80. For the same reasons I do not accept that any feelings of annoyance on the part of Officer Jones meant that the investigation into Furlong's tax position was not genuine or legitimate.

81. My finding that the investigation was not irrational or in bad faith does not change the burden that is on HMRC to show that the information or documents required by the Notice are reasonably required to check Furlong's tax position, rather than Mr Curtis's tax position. I have kept this in mind when deciding whether the Items in the Notice are reasonably required for the purposes of FA 2008, Sch 36, para 1.

Reason to suspect

82. Where a person has submitted a tax return for a period, a taxpayer notice may not be given for the purpose of checking the person's tax position for that period unless one of the conditions in FA 2008, Sch 36, para 21 applies. HMRC rely on Condition B, which applies where an officer of HMRC has reason to suspect (amongst other things) that, as regards that person, an amount that ought to have been assessed to tax may not have been so assessed.

83. I respectfully agree with the Tribunal in *Hackmey* [2022] UKFTT 160 (TC) (Judge Aleksander) at [35] that the requirement for an HMRC officer to have "reason to suspect" sets a low bar. "Suspicion" means something less than "belief". However, there must still be a "reason" for the suspicion, and I also agree with the Tribunal in *Perring* [2021] UKFTT 110 (TC) (Judge Gething and Noel Barrett) ("*Perring*") at [19] that:

> "the requirement that an Officer has reasonable grounds to suspect that an assessment has become deficient requires not only that the Officer to have formed that view but in addition that it must also be objectively reasonable to hold that view and that means that there must be some evidence to indicate a deficiency in relation to each year in respect of which the notice has been issued."

Whether a genuine suspicion

84. While Furlong's submissions on this topic were mainly directed to the issue of whether Officer Jones's suspicions were objectively justified, Mr Jones also submitted that Condition B was not satisfied because Officer Jones did not genuinely suspect that tax had been underassessed in relation to Furlong. Instead, according to Mr Jones, Officer Jones's true suspicion was that Mr Curtis had been underassessed.

85. This submission was based on the surrounding context of the investigation into Mr Curtis's tax affairs and, in particular, on Officer Jones's letter of 20 October 2022 to Furlong, which stated that the investigation would mainly deal with concerns over the company receiving football consultancy income "on behalf of" the director. Mr Jones submitted that if Officer Jones suspected that Furlong had received income "on behalf of" Mr Curtis, then any tax liability would fall on Mr Curtis and not on Furlong.

86. When this point was put to Officer Jones in cross-examination, he said that he had a genuine suspicion that Furlong had received undeclared consultancy income and had therefore been underassessed to tax, but that "one possibility" was that this income was instead properly taxable in the hands of Mr Curtis.

87. I accept Officer Jones's evidence on this point, partly because I considered him to be a reliable witness, and also because his explanation is inherently plausible in light of the surrounding facts. He knew that £100,000 was payable under a consultation agreement that had been entered into by Mr Curtis, but had subsequently been informed that what he believed to be the same £100,000 had been received by Furlong. The logical conclusion is that this amount should have been declared as income in the tax returns of either Mr Curtis or Furlong, but Officer Jones did not have sufficient information to know which of these alternatives was correct.

88. It is entirely consistent with the scheme of the legislation that HMRC may pursue more than one line of investigation. As the Court of Appeal said in *R (oao Derrin Brother Properties Ltd) v HMRC* [2016] EWCA Civ 15 at [68]:

> "It is inevitable in many cases, particularly where there are complex arrangements designed to evade tax, that at the investigatory stage it will be

> difficult, if not impossible, for HMRC to be definitive as to the precise way in which particular documents will establish tax liability."

89. I therefore find that Officer Jones did have a genuine suspicion that tax had been underassessed as regards Furlong. The fact that he may also have suspected, as an alternative line of investigation, that tax on the same income may have been underassessed as regards Mr Curtis, does not prevent this from being the case.

Two trades

90. HMRC submitted that Officer Jones had reason to suspect that Furlong had been under-assessed to tax because the letter of 23 September 2022 from Mr Curtis's advisers included the information that Furlong had received payments for football consultancy work totalling £100,000 in the period ending 31 March 2017.

91. Until that time, Officer Jones had understood, based on Furlong's accounts and tax computations, that this company had a single trade of farming and agricultural work. As Furlong's tax computations for the period ending 31 March 2017 made repeated references to farming but none to football consultancy, Officer Jones suspected that the £100,000 from the consultancy work may have been omitted from Furlong's tax return for that period.

92. It was not disputed that, under CTA 2010, s 45, a trading loss that was made in an accounting period beginning before 1 April 2017 and is carried forward to future periods may only be used to reduce profits of the same trade. Furlong had made losses in the period ending 31 March 2017 that were described as farming losses. As it had carried these losses forward and used them to reduce profits in the period ending 30 September 2019, Officer Jones suspected that these losses may have been used incorrectly, because for both of these periods the profits or losses of the farming and consultancy trades were not shown separately in the tax computations.

93. Mr Jones submitted, and I accept, that Officer Jones's discovery that Furlong had a second trade does not of itself amount to a "reason to suspect" an underassessment of tax, and nor does the fact that Furlong received income from football consultancy. Moreover, Mr Jones submitted that HMRC already knew (or should have known) that Furlong had more than one trading activity, because:

(1) Furlong's accounts for the period ending 31 March 2017 state that the company's "principal" activity was farming, which means that there must be one or more other activities.

(2) As a matter of corporate law, companies are entitled to carry on more than one trade. Section 31 of the Companies Act 2006 provides that, subject to any restrictions in the articles, a company's objects are unrestricted.

(3) Furlong made a taxable profit in its accounting period ending 31 March 2018. Its tax computations for that period show that a loss was brought forward from an earlier period, but it neither set off that loss against its profit, nor made a claim under CTA 2010, s 45(4A) to prevent the automatic use of the loss. The only explanation for this was that Furlong must have had more than one trade.

(4) HMRC had been informed, in the letter from Mr Curtis's advisers dated 5 November 2018, that Furlong had a trade of agency representation of sportsmen. This letter pre-dated Officer Jones's involvement with the case, and in cross-examination he accepted that when he reviewed the file, he had overlooked this letter (or this part of the letter).

94. Mr Jones repeatedly cross-examined Officer Jones on the issue of whether Furlong's final statutory accounts and tax computations for the period ending 31 March 2017 gave rise to a reason to suspect an underassessment to tax. Much of this questioning centred on whether the accounts and computations had been drawn up correctly given that both parties now accepted that Furlong was carrying on two trades in that period.

95. Officer Jones drew attention to the fact that the accounts give a single figure for turnover, but the computations show a loss that is described as being from farming. There is no separate figure in the computations showing a profit or loss from football consultancy; or, indeed, any mention of football consultancy. Mr Foreman, in his evidence, said that there is no requirement under relevant accounting standards for a company's accounts (as opposed to tax computations) to show the results of each trade separately, and I did not understand HMRC to dispute this point.

96. In Furlong's accounts for the period ending 31 March 2017, the figure given for turnover is £129,560. The accounts then show the subtraction from this figure of £15,541 for "cost of sales" and £139,870 for "administrative expenses", giving a negative figure of £25,851 which is described as a "loss for the financial period". Mr Foreman described this figure as an "overall loss", which I take to mean that it represents the combined results of Furlong's two acknowledged trades.

97. In Furlong's tax computations for the same period, the figure of £25,851 appears under a heading of "Farming – Adjusted trading result", and is described as "profit/(loss) before tax per accounts". In other words, a figure that appears in the accounts as an overall loss is described in the tax computations as a farming loss.

98. I consider that Officer Jones's discovery that Furlong operated two trades in the period ending 31 March 2017, combined with the fact that its tax computations for that period contain repeated references to farming but none to football consultancy, gave him a prima facie reason to suspect that either the consultancy income had been omitted from the company's tax return, or that loss relief may have been applied incorrectly because the tax computations failed to separate the profits and losses of the two trades.

99. It was open to Furlong to show that this suspicion was not reasonable, by explaining why the computations contain no reference to the consultancy trade, and how a loss in the accounts which represents the combined results of two trades is described in the tax computations as a loss from farming. However, neither Mr Jones in his submissions, nor Mr Foreman in his evidence, provided such an explanation.

100. I was provided with Furlong's tax computations for the period ended 31 July 2022, in which the farming and consultancy trades are clearly separated. This illustrates that it is possible for the results of the two trades to be shown separately in Furlong's tax computations.

101. In these circumstances I consider that Officer Jones's suspicion was objectively reasonable.

102. I accept that the letter dated 15 November 2018 means that it was possible that Officer Jones could have discovered earlier than he did that Furlong was carrying on two trades. However, I do not consider that the time at which he made this discovery should alter my finding that he had reason to suspect an underassessment of tax. Even if he had known all along that Furlong had two trades, he would still hold a set of tax computations which made reference to only one of those trades, without knowing why that was the case.

103. It is clear from the wording of Condition B that, as described in the extract from *Perring* reproduced above, Officer Jones must have a reason to suspect an underassessment of tax in relation to each chargeable period to which the Notice relates. The Notice covers five chargeable periods: those ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021. I consider each in turn.

(1) For the period ending 31 March 2017, I find that, for the reasons I gave in paragraph [98] above, Officer Jones had reason to suspect that consulting income had been omitted from Furlong's tax return. He was told that Furlong had received consultancy payments on 22 April 2016 and on 31 May 2016; both of these dates are within the relevant period.

(2) For the period ending 31 March 2018, it was Officer Jones's unchallenged evidence that the consultancy agreement dated 7 April 2016 (under which the payments had been received on 22 April 2016 and 31 May 2016) ran for two years. If Furlong had failed to declare income under this agreement for the period ending 31 March 2017, it was reasonable for Officer Jones to suspect that it may also have failed to declare income under the same agreement for the period ending 31 March 2018.

(3) For the period ending 30 September 2019, Officer Jones's suspicions concerned the utilisation of the carried forward losses. One of his lines of investigation was that, rather than simply failing to include the consultancy income in its tax computations, Furlong may have failed to separate the profits and losses of the two trades, with the result that loss relief may have been applied incorrectly. I therefore find that Officer Jones had reason to suspect that tax relief given to Furlong for this period may have been excessive.

(4) I also note that as the consultancy agreement dated 7 April 2016 ran for two years, it would not have expired until 6 April 2018, which fell in the period ending on 30 September 2019. This is therefore an additional objective reason for Officer Jones's "reason to suspect" for that period.

(5) I had no submissions from HMRC that Officer Jones held evidence that gave him an objective reason to suspect that Furlong had failed to declare football consultancy income in the periods ending 30 September 2020 and 31 July 2021. The two-year consultancy agreement dated 7 April 2016 had expired by this time, and while it is clear from the contents of the Notice that Officer Jones suspected there may have been other such agreements, HMRC did not present evidence that there was an objective justification for this suspicion.

(6) I do not consider it is sufficient, for these purposes, for HMRC to contend that because Officer Jones suspected that Furlong had not declared income from the agreement dated 7 April 2016, it was reasonable for him to suspect that Furlong had, without HMRC's knowledge, entered into other consultancy agreements and failed to declare the related income. This might have happened, and would have been a legitimate subject for an enquiry, but what is required for Condition B is for there to be some objective evidence that this is what, in fact, took place. I therefore find that HMRC have failed to discharge the burden of showing that Officer Jones had reason to suspect that Furlong had failed to declare football consultancy income in the periods ending on 30 September 2020 and 31 July 2021.

The commerciality of the farming trade

104. HMRC submitted that Officer Jones had a further reason to suspect that tax may have been underassessed in relation to Furlong, because he suspected that the farming trade may

not have been conducted on a commercial basis. The combined effect of CTA 2010, ss 37 and 44 is that certain forms of loss relief, including the deduction of trading losses against the company's total profits for the period in which the losses are made, are only available if that trade is conducted on a commercial basis. Therefore, for any period in which Furlong was carrying on more than one trade, it should not have deducted farming losses from its total profits unless the farming trade was being conducted on a commercial basis.

105. As I understood it, HMRC's submission was that Officer Jones suspected the farming trade lacked commerciality for two main reasons. The first was that Furlong's advisers had referred to the farming activity as being solely concerned with breeding alpacas, which Officer Jones equated with hobby farming. The second was that, although Furlong declared profits for its periods ending 31 March 2018 and 30 September 2019, once it was appreciated that a significant proportion of its income could have come from football consultancy, it was possible that the farming trade had made a loss in each of the five periods covered by the Notice.

106. I find that these reasons are not sufficient to establish that Officer Jones had a reason to suspect an underassessment of tax as regards Furlong for each of the five periods in contention. The only evidence I had in relation to alpaca breeding was a letter from Mr Curtis's advisers dated 22 November 2022, which included the following:

> "FSL [i.e. Furlong] is free to undertake such other commercial activities as its Directors determine. If you had consulted FSL's Companies House designation you would know that it is Code 96090: "Other service activities not elsewhere classified". The reference to "farming" is a reference to alpaca breeding only."

107. In context, it is clear that the "reference to farming" means the reference in Furlong's accounts for the period ending 31 March 2017. As these accounts were only for this one period, I do not see that this provided Officer Jones with a reason to suspect that the farming trade consisted exclusively of alpaca breeding for each of the periods covered by the Notice. Officer Jones also did not explain his reason for equating alpaca breeding with hobby farming, and nor did HMRC provide evidence as to why this activity, in and of itself, indicated a lack of commerciality.

108. HMRC also did not explain how, given their premise that Furlong had failed to separate the results of its two trades, they nonetheless had information that gave them reason to suspect that the farming trade had consistently made losses. And even if this had been the case, the fact that a trade makes losses in five consecutive periods does not necessarily mean that it is not being conducted on a commercial basis.

109. These matters would all have been suitable subjects for an enquiry, but what is required for Condition B is a reason to suspect that tax has been underassessed. From HMRC's submissions and Officer Jones's evidence, I am unable to find that there was an objective reason for this suspicion. It is telling that in Officer Jones's witness statement he says that "By obtaining the details requested in my formal information notice, I hoped to investigate whether the farming activities amounted to a commercial trade or not." This language would be appropriate to an enquiry, but does not satisfy Condition B.

110. In conclusion on this point, I find that HMRC have discharged the burden of showing that there was a relevant "reason to suspect", and that therefore Condition B was satisfied, for the periods ending on 31 March 2017, 31 March 2018 and 30 September 2019, but not 30 September 2020 or 31 July 2021.

Old documents

111. The effect of FA 2008, Sch 36, para 20 is that the Notice may not require the production of a document that was more than six years old at the time of the issue of the Notice, unless the Notice was given by, or with the agreement of, an "authorised officer".

112. HMRC's case was that none of the documents required by the Notice were more than six years old when the Notice was issued, and that therefore paragraph 20 is not relevant to this appeal. In addition, Mrs Cook submitted that Furlong did not lead any evidence that any items were over six years old, and did not challenge Officer Jones's evidence that he did not need the agreement of an authorised officer. As such, Mrs Cook submitted that any ground of appeal based on paragraph 20 must fail.

113. This is not a case in which there is a factual dispute about the age of any specific document. The requirement for the agreement of an authorised officer in relation to any document in the Notice that was more than six years old is provided for by statute, and cannot be dispensed with by anything Officer Jones said in his evidence, whether it was challenged or not.

114. I find as a fact that the Notice was not given by, or with the agreement of, an authorised officer, and so where it is relevant I have adjusted the Notice to exclude any documents that would plainly have been more than six years old at the time the Notice was issued.

DECISION ON DISPUTED ITEMS

115. In light of the discussion above, the approach I have taken in relation to each of the Items requested in the Notice is to decide:

(1) whether they are statutory records – if they are, then no appeal right arises and the requested Item must stand. HMRC submitted that this is the case for Items 1, 2 and 4, but it is appropriate for me also to consider whether Items 5 and 7 are statutory records, because this goes to the question of the Tribunal's jurisdiction;

(2) if they are not statutory records, whether they relate to a chargeable period for which Officer Jones has reason to suspect that Furlong may have been underassessed to tax;

(3) if so, whether they are reasonably required to check Furlong's tax position in relation to that period; and finally

(4) whether any of the items requested were more than six years old at the time of the issue of the Notice.

116. Mr Jones submitted that there is an additional requirement, which is that a Notice that relies on Condition B must be tailored to the specific issue said to have given rise to the relevant reason to suspect. Otherwise, according to Mr Jones, the limitation period for opening an enquiry would be almost meaningless.

117. I have not found this to be a straightforward question, but I consider that, in any event, the Notice is (to use Mr Jones's term) "tailored" to the relevant reason, or reasons, to suspect. Items 1, 2 and 5 are designed to elicit more information on the football consultancy income which the officer suspected may have been omitted from the tax returns for the relevant periods. Items 4 and 7 relate only to the period ending on 30 September 2019, for which the officer suspected that loss relief may have been applied incorrectly as a result of a failure to separate the results of the two trades. The requested items are relevant to that suspicion

because they would enable HMRC to distinguish between expenses incurred in the farming trade, and those which related to football consultancy.

118. This means that I do not need to decide whether Mr Jones's submission on the "tailoring" issue is correct.

Items 1, 2 and 5

119. It is convenient to consider Items 1, 2 and 5 together.

Statutory records

120. I have found that information and documents relating to the periods ending on 31 March 2017 and 31 March 2018 are no longer statutory records.

121. The combined effect of FA 2008, Sch 36, para 62 and FA 1998, Sch 18, para 21(5)(a) is that statutory records include records of all receipts and expenses in the course of a company's activities, and the matters in respect of which the receipts and expenses arise. I consider that it is clear from the legislative context that "receipts" means amounts which the company receives, rather than documents in the sense of till receipts. It follows that all amounts received by Furlong in the course of its trading activities are receipts for this purpose.

122. Item 1 requests Furlong to break down its income for the periods in question based on the source of that income, indicating whether it is from farming, football consultancy, or anything else. Item 2 requests a further breakdown of the football income for each period, identifying who the work was completed for (i.e. the persons making the payments), and in what amounts.

123. I find that Items 1 and 2 are records of "receipts…in the course of the company's activities, and the matters in respect of which the receipts…arise" within the meaning of FA 1998, Sch 18, para 21(5)(a), and so are statutory records in so far as they relate to the periods ending on 30 September 2019, 30 September 2020 and 31 July 2021.

124. I consider that records of "receipts in the course of the company's activities" extends to an itemisation of each payment made to the company, including its date and amount. I was not directed to any authority on the meaning of "matters in respect of which receipts arise", but in my view, the requirement to identify the persons making the payments falls within this description, as this appears to be the most straightforward way in which the company could record the "matter" to which each consultancy payment relates.

125. I considered whether it would be sufficient for these purposes to identify each such amount as "football consultancy income", but in my view the ordinary meaning of a record of the "matter" in respect of which a payment arises requires more detail than simply identifying the trade to which the payment relates. I therefore find that the request to identify the persons making payments to Furlong in the course of its football consultancy activities is a request for statutory records.

126. Mr Jones submitted that a request for a "breakdown" of income is not a statutory record because it is asking for new documents to be brought into existence. I do not accept this submission because I consider that this request is for "information", and the definition of a statutory record in FA 2008, Sch 36, para 62 applies both to information and to documents. This also accords with the Tribunal's decision in *Mathew* at [55], which I have quoted above.

127. Item 5 requests copies of all consultancy agreements drawn up between Furlong and other parties for work to be completed relating to the football industry.

128. It was not clear to me that Furlong would need copies of these agreements to prepare its tax returns, nor that they would be classed as records of "matters in respect of which the receipts…arise" within the meaning of FA 1998, Sch 18, para 21(5)(a). Further, HMRC did not submit that these agreements were statutory records. I therefore find that the documents requested by Item 5 are not statutory records.

129. In summary, I find that Items 1 and 2 are statutory records, but only in so far as they relate to the periods ending on 30 September 2019, 30 September 2020 and 31 July 2021. I have therefore considered whether HMRC have met the requirements of FA 2008, Sch 36 in relation to the other information and documents required by Items 1, 2 and 5.

Reason to suspect

130. I have found above that HMRC have discharged the burden of showing that there was a relevant "reason to suspect" for the periods ending on 31 March 2017, 31 March 2018 and 30 September 2019, but not 30 September 2020 or 31 July 2021.

131. I have therefore varied Item 5 to remove any items which relate to the periods ending on 30 September 2020 or 31 July 2021.

132. I have next considered whether the remaining items are reasonably required to check Furlong's tax position for the periods in question.

Reasonably required

133. As described above, Furlong's tax computations for the periods ending on 31 March 2017, 31 March 2018 and 30 September 2019 contained no reference to any trade other than farming. Officer Jones subsequently became aware that at some point between 7 April 2016 and 22 April 2016, Furlong had become party, through novation, to a football consultancy agreement that ran for a two-year period beginning on 7 April 2016, and had received £100,000 under this agreement.

134. In these circumstances I consider that it is reasonable for HMRC to require Furlong to state how much income it has received from football consultancy services in these periods, and to require evidence of this.

135. Mr Jones submitted that for HMRC to seek to know the identity of any contracting party, and to request copies of consultancy agreements, is irrelevant, and a fishing expedition "par excellence".

136. While the identity of the contracting parties and the contents of consultancy agreements would not affect the calculation of any tax that may be due, I consider that these are reasonable requests because they will assist HMRC to verify the information they have asked Furlong to provide about how much football income it has received.

137. If all Furlong needed to do to comply with the Notice was to provide HMRC with a single figure for the amount of football income it received for each period, then HMRC would not know where the income had come from and so would find it difficult to check whether this information was correct. If, on the other hand, HMRC receive copies of consultancy agreements, they will be able to verify who has paid Furlong for its services, and if, moreover, Furlong tells HMRC how much it has received under each agreement and on what dates, then HMRC will be in a better position to check how much football consultancy income Furlong has received.

138. Mr Jones submitted, and I accept, that any consultancy agreements would not, of themselves, establish the amounts actually paid under those agreements. However, I do not accept that this means the agreements are not reasonably required, for two reasons. The first

is that this is presumably precisely why, as a separate and additional item, the Notice also requires Furlong to state "who the work was completed for and the amount of income". The second is that while any payments provided for in consultancy agreements may not provide conclusive evidence of the amounts received, they may still be a useful source of information: for example, the fact that Officer Jones had sight of the agreement dated 7 April 2016 appears to have assisted him to match payments made under that agreement with payments received by Furlong.

139. In cross-examination, Officer Jones stated that if he knew who had paid for Furlong's services, he would be able to check this information against bank statements. Mr Jones submitted that as the Notice did not request any bank statements, this could not have been the true reason that he requested these details.

140. I am not able to make findings as to what bank statements, or other records against which this information could be checked, HMRC hold or may be able to obtain, either from Furlong or otherwise. I do not, therefore, consider that this bring Officer Jones's credibility into question, nor do I find in this submission any basis to conclude that the requested items were not reasonably required.

141. I therefore find that, subject to the variations I have made below, Items 1, 2 and 5 are reasonably required for the purpose of checking Furlong's tax position.

Decision on Items 1, 2 and 5

142. As a result of my findings above, Item 1 is confirmed, and I have made a number of variations to Items 2 and 5. I have made some further variations where I considered that the language could be clearer.

143. Items 2 and 5 are varied so that they read as follows.

> **Item 2**
>
> A breakdown of the income relating to the football industry that Furlong received in each of the periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021, stating who the work was completed for and the amount received from each paying party.
>
> **Item 5**
>
> Copies of all consultancy agreements relating to the football industry entered into between Furlong and other parties between 1 December 2016 and 30 September 2019.

144. The reference to 1 December 2016 in Item 5 reflects my findings on FA 2008, Sch 36, para 20, and is so that the Notice does not require the production of documents that were more than six years old at the time the Notice was issued.

Items 4 and 7

145. Furlong's final statutory accounts for the period ending on 30 September 2019 include an entry for "travelling expenses" in the amount of £66,854. Items 4 and 7 in the Notice requested details of these expenses, to include the dates they were incurred and in what amounts, an explanation of their business purpose, and copies of the related invoices.

Statutory records

146. As set out above, a company's statutory records include records of all expenses incurred in the course of the company's activities, and the matters in respect of which the expenses arise. It follows that records of the dates on which travelling expenses were

incurred, and in what amounts, form part of Furlong's statutory records, and that therefore no right of appeal arises in respect of this aspect of the Notice.

147. I consider that the invoices relating to the travelling expenses also fall within the definition of a statutory record, as they are records of expenses incurred in the course of the company's activities. I observe that this is in accordance with the Tribunal's *obiter* comments in *Mathew* at [89], where it was said that:

> "In the context of a company, or even a self-employed business, it is usually relatively straightforward to identify statutory records. These will include a business bank accounts, invoices, purchase orders, till rolls etc."

148. I also note that Furlong is still within the period for which it is required to preserve records in relation to the period ending 30 September 2019 under FA 1998, Sch 18, para 21(2A). The invoices have therefore not ceased to be statutory records through the passage of time.

149. I did not have detailed submissions on whether an "explanation of business purpose" in relation to the travelling expenses was a statutory record. It is not clear to me that it is. While there is a requirement for Furlong to keep records of the matters in respect of which expenses arise, in the case of travelling expenses this could be satisfied by noting, for example, that a particular train journey was taken by a particular person on a particular date, without necessarily recording the purpose of the journey.

150. I have therefore gone on to consider, if this explanation is not a statutory record, whether it is reasonably required to check Furlong's tax position for the period ending 30 September 2019. I have already decided that Officer Jones had a relevant "reason to suspect" for this period, and that therefore Condition B is satisfied.

Reasonably required

151. As noted above, Furlong had made losses in the period ending 31 March 2017, and had purported to use those losses to reduce its profits for the period ending 30 September 2019. As these were described as farming losses, and as the tax computations for the period ending 30 September 2019 had not separated the results of the farming trade from the results of the football consultancy trade, Officer Jones had reason to suspect that these losses may have been used incorrectly.

152. I find that it is reasonable, in these circumstances, for Officer Jones to seek more information on both the income and the expenditure of each of the two trades, so that he can ascertain whether the farming trade, considered on its own, had made a profit in this period.

153. While it is true that (after the issue of the Notice, and after Officer Jones had drawn attention to the matter) Furlong's advisers accepted that there was an error in the loss relief claim, I do not consider that, as a result, this information ceased to be reasonably required. The officer suspected that there was an error in the tax return, and had that suspicion confirmed. It is reasonable that he would still wish to investigate the company's income and expenditure, so that he can understand the circumstances in which the error arose, and so that he can check that what Furlong now asserts to be its tax position is correct.

154. Information on whether an expense has a business purpose is reasonably required for this purpose because this determines whether it can be taken into account in calculating the company's taxable profits (both the profits of the farming trade, and total profits).

155. Items 4 and 7 of the Notice are therefore confirmed.

CONCLUSION

156. Items 1, 4 and 7 of the Notice are confirmed. Items 2 and 5 are varied as set out above. For ease of reference, a complete version of the varied Notice is set out in the Appendix to this decision.

157. I direct that Furlong must comply with these requirements within 30 days of the date of the release of this decision.

158. This decision contains full reasons and findings of fact.

159. In accordance with FA 2008, Sch 36, para 32(5), a decision of this Tribunal on an appeal against an information notice is final.

RACHEL GAUKE
TRIBUNAL JUDGE

Release date: 25 July 2024

APPENDIX

The Notice as varied

Item 1

A breakdown of the income declared by Furlong in its accounts for each of the periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021, splitting the income based on its sources (e.g. income from farming, income from football etc).

Item 2

A breakdown of the income relating to the football industry that Furlong received in each of the periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021, stating who the work was completed for and the amount received from each paying party.

Item 4

For the period ending on 30 September 2019, details of the travelling expenses totalling £66,854. This should include the date expenditure was incurred and its value as well as an explanation of the business purpose.

Item 5

Copies of all consultancy agreements relating to the football industry entered into between Furlong and other parties between 1 December 2016 and 30 September 2019.

Item 7

Invoices for the travelling expenditure incurred during the period ending on 30 September 2019.