



TC03469

Appeal number: TC/2013/06405 & TC/2013/06406

CLOSURE NOTICE – whether reasonable grounds for not directing a closure notice – yes

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MARTIN SHEPPARD
&
KEVIN MCGRATH**

Applicants

- and -

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

Respondents

**TRIBUNAL: JUDGE JENNIFER BLEWITT
MR TOBY SIMON**

Sitting in public at Bedford Square on 31 March 2014

Mr S. Arthur, Counsel instructed on behalf of the Applicants

Mr A. Young, Officer of HMRC for the Respondents

DECISION

Background

5 1. In two applications dated 18 September 2013 the Applicants applied for closure notices in respect of their respective Self Assessment returns for the periods 2004 to 2009 inclusive.

2. By way of background, on 21 January 2009 and 24 April 2009 respectively HMRC opened enquiries into the 2007 returns of Mr McGrath and Mr Sheppard.
10 Discovery assessments were raised in respect of Mr McGrath's 2005 and 2006 returns on 19 March 2010. On 16 November 2010 HMRC initiated an enquiry into the Applicants' 2009 returns under Code of Practice 8. The case was transferred to HMRC's Specialist Investigations on 28 June 2011 at which point the enquiry proceeded formally under Code of Practice 9. Over the course of 2012 the Applicants
15 were interviewed by HMRC, in which they signed denial letters, and were provided with the opportunity to produce information to HMRC. We were provided with bundles containing significant amounts of correspondence between the parties. Due to their volume we will not set these out in any detail in this decision, but all were considered carefully.

20 Evidence

3. We heard evidence from Mr S. Ghufloor, the HMRC Specialist Investigations Officer with principal responsibility for this case. He explained that he has reason to believe that the Applicants' tax affairs have not been accurately stated to HMRC and that there is information outstanding which will assist the enquiry. At present, Mr
25 Ghufloor told us, he is not able to raise assessments to best judgment as he is still in the process of obtaining reliable information as part of his fact-finding task. Currently HMRC is in the process of seeking information from third parties. The information sought includes, inter alia, that relating to the sale of an entity in Germany in which the Applicants held an interest and from which income streams should have been
30 taxed. The information supplied to HMRC by the Applicants as to the date on which the entity was sold and the valuation of it contradicts other information in HMRC's possession.

4. Mr Ghufloor explained that the on-going enquiries relate to the Applicants' connection with a partnership ("the REIT partnership") and other non-UK EU entities,
35 which also concern two other former partners (with larger shares, the 'senior partners') who are also under a Code of Practice 9 investigation by Mr Ghufloor. We should note that the Applicants no longer hold an interest in the REIT partnership and as a result have stated that they are unable to provide HMRC with information, which is not in their possession.

40 5. In cross-examination Mr Ghufloor stated that he estimated that he had read in excess of 10,000 emails during the course of this investigation. The volume of information he considers in an investigation is dependant on the size and complexity

of the case; in this case there are a number of individuals involved and he anticipates a substantial amount of further information being obtained.

Submissions on behalf of the Applicants

5 6. Mr Arthur submitted that the Applicants' share of the partnership amounted to 25% between them which is indicative of the fact that they did not have control of it as minority shareholders. HMRC are using the Applicants to assist their enquiries into a wider tax investigation. The Applicants obtained professional independent advice in respect of their tax returns and are anxious that HMRC's investigation is not unnecessarily prolonged.

10 7. The Applicants remain unaware of the issues in respect of which HMRC are seeking information and it should be borne in mind that some of the transactions conducted by the partnership date back to 1997.

15 8. In summary, HMRC's investigation is disproportionate as are the costs which have arisen for the Applicants as a result. The conduct of the officers involved appears designed to achieve HMRC's preconceived ideas.

HMRC's Submissions

20 9. Mr Young submitted that a lengthy period of investigation is to be expected in such a complex case involving substantial amounts of paperwork. HMRC are endeavouring to resolve the investigation as quickly as possible but time is needed to obtain and consider information relevant to the enquiries. To direct a closure notice at this stage would add to the litigation as HMRC would have to issue a variety of assessments under different legislation in order to protect its position.

10. Mr Young agreed that finality is needed but contended that HMRC will continue their enquiries as quickly as possible in order to bring this matter to an end.

25 Decision

30 11. The issue to determine is whether HMRC have satisfied the Tribunal that there are reasonable grounds for not issuing a closure notice within a specified period. The oral evidence before us was brief. However it was clear from the volume of correspondence provided to us that the investigation involves complex issues and this is not a case where little has been done by HMRC since the investigation commenced.

35 12. The test to be applied is whether on an objective view it is appropriate for a closure notice to be issued. In reaching our decision we have balanced a number of factors, including the fact that this enquiry has been ongoing for a significant period of time, the cooperation of the Applicants and the anticipated volume of information which remains outstanding, which we note may have to be obtained from third parties.

13. Whilst we make no criticism of HMRC seeking to avoid litigation in the future, we concluded that this could not constitute an acceptable reason to allow the enquiry

to continue endlessly. That said, we accepted the oral evidence of Mr Ghufloor as to the complex nature of the investigation and the fact that substantial amounts of information are required in order for HMRC to raise assessments in best judgment. We note that the scope of the investigation is wide and that HMRC require time to assess the reliability of information obtained from the Applicants which appears to contradict other sources of information within HMRC's possession. For those reasons we are satisfied that there are reasonable grounds for not issuing a closure notice within a specified period. We note Mr Ghufloor's evidence that he is hopeful that the information sought will be obtained over the course of the next 6 or 7 months whereafter HMRC will be in a position to review its case. We would encourage HMRC to be proactive in meeting this time estimate and should the investigation be unnecessarily delayed we have no doubt that any further applications made by the Applicants would sympathetically treated by the Tribunal.

- 14. The applications are refused.
- 15. 15. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**JENNIFER BLEWITT
TRIBUNAL JUDGE**

RELEASE DATE: 4 April 2014

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