[2016] UKFTT 0558 (TC)

TC05307

Appeal number: TC/2015/7161
TC/2015/7162

STAMP DUTY LAND TAX – application for issue of a closure notice – whether HMRC reasonably required disclosure prior to closure – yes – HMRC establishing reasonable grounds for resisting closure – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) ADAM FROSH & RACHEL JOYCE **Applicant**
(2) DAVID GORING-THOMAS & PAULA GORING THOMAS

- and -

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

TRIBUNAL: JUDGE AMANDA BROWN

Sitting in public at Royal Courts of Justice on 18 July 2016

Julian Hickey of Counsel instructed by Cornerstone Tax Advisors for the Appellant

Hui Ling McCarthy of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This decision concerns the applications made by Adam Frosh and Rachel Joyce ("Frosh/Royce"), and David and Paula Goring-Thomas ("Goring-Thomas") (together "the Applicants") for a direction for the immediate closure of enquires opened by HM Revenue & Customs ("the Respondents") in respect of Stamp Duty Land Tax ("SDLT") returns rendered by each of the Applicants.

2. The Tribunal were provided with a witness statement together with 17 exhibits prepared by Mr David Hannah of Cornerstone Tax Advisors ("Cornerstone"); the Respondents did not wish to cross examine Mr Hannah and accordingly his statement was taken as read. In addition the Tribunal had two files containing the documentation in respect of each of the Applicants these; files included transactional documents (though it is to be noted that only some of these transactional documents were executed), SDLT returns and correspondence with the Respondents.

Background

3. In July 2009 Cornerstone identified an opportunity to mitigate SDLT payable on the purchase of residential property which it marked and sold to a significant number of clients including the Applicants.

4. For the purposes of the application under consideration it is not important to understand the detail of the arrangements. However, in outline, the steps in the arrangement were:

(1) The intending purchaser of the property (in this case the Applicants) entered into a contract to purchase residential property from a vendor.

(2) As part of the purchaser's financial arrangements for funding the acquisition, they enter into alternative finance arrangements with a qualifying financial institution ("QFI") using a sale and leaseback alternative finance contract.

(3) On completion of the purchase from the vendor the purchaser simultaneously executed the financing arrangement, selling the property to the QFI and receiving back a long leasehold interest together with an option to acquire the freehold title.

5. The efficacy of the planning relies on the provisions of s45(3) Finance Act 2003 to exempt from SDLT the purchase of the property from the vendors and s71A Finance Act 2003 to exempt the sale and leaseback transaction.

6. Cornerstone introduced its customers to a Guernsey Protected Cell Company ("PCC") which enable the segregation of assets and liabilities attributable to individual participators or owners. The PCC is, the Tribunal understands, a special purpose vehicle established for the purpose of the planning.

7. Planning of this nature is the subject of litigation in the matter of *Project Blue Limited* on which the Court of Appeal ruled in May 2016 ([2016] EWCA Civ 485). Again it is not particularly important for the purposes of these applications to understand in detail the various judgments of the Tribunals and Court in *Project Blue* save to say that the current determination of the Court of Appeal has the effect that the purchaser of the land is not considered to be liable for SDLT; however, the QFI is so liable. The Respondents had issued closure notices in respect only of Project Blue Limited and not the QFI. In *Project Blue* it is to be noted that the QFI is a Qatari based bank and Project Blue Limited is an entity controlled by the sovereign wealth fund of the State of Qatari.

The Transactions subject to enquiry

8. Frosh/Royce entered into a contract for the purchase of a property known as Aldwick Manor on 6 August 2010. Following exchange of contracts they entered an alternative financing transaction with Cornerstone's PCC. The purchase of Aldwick Manor was completed on 28 September 2010. Simultaneously with the purchase Frosh/Royce conveyed the property to the PCC and was granted a long leasehold.

9. Frosh/Royce submitted Land Transaction Returns ("SDLT1s") on 13 October 2010 along with letters from their conveyancing solicitor briefly explaining why no SDLT had been declared and paid on the acquisitions. Returns were submitted in connection with each of the transactions on behalf of Frosh/Royce and the PCC.

10. On 10 June 2011 the Respondents opened an enquiry into the Frosh/Royce returns.

11. Goring-Thomas entered into a contract for the purchase of a property at 26/26A Withdean Road on 12 March 2010. Following exchange of contracts they entered an alternative financing transaction with Cornerstone's PCC. The purchase of 26/26A Withdean Road was completed on 31 March 2010. Simultaneously with the purchase Goring-Thomas conveyed the property to the PCC and was granted a long leasehold.

12. Goring-Thomas submitted SDLT1s on 4 October 2010.

13. On 24 January 2011 the Respondents opened an enquiry into the Goring-Thomas returns. On 26 April 2011a letter in the same terms as that submitted by Frosh/Royce was sent by Goring-Thomas's conveyancing solicitor. Returns were submitted in connection with each of the transactions on behalf of Frosh/Royce and the PCC.

Correspondence and communication with the Respondents

14. Cornerstone corresponded with the Respondents on behalf of both Applicants and a very significant number of other individuals and corporates who had implemented the planning. Precise numbers were not given to the tribunal though it appears from the correspondence that the number of users of Cornerstone's planning scheme may have been as many as 700.

15. On 13 November 2012 the Respondents met with Cornerstone and representatives from RPC Solicitors to discuss the effective management of the significant number of enquires that had been opened in relation to property purchases subject to the planning sold by Cornerstone. At that time the Respondents agreed that they would not call for all documents and information in relation to each and every client of Cornerstone but rather would identify a sample of clients from whom full documentation would be requested. The meeting note provides:

> "[the Respondents] said that it had been agreed that HMRC would not call for all documents and information for all of the cases dealt with in SI Glasgow. This was in order to save resources for both HMRC and Cornerstone. Given the homogenous nature of the transactions it did not appear to be a good use of resources to call for information and documents in all 600-700 cases. [Cornerstone] agreed. However [the Respondents] went on to say that he felt a bit exposed in as much as a user might request a closure notice in a case where SI Glasgow had not yet requested any information or documentation. [The Respondents] went on to say that if this was the case then he was confident that he could go to tribunal and request further time in which to call for the information and documents by explaining that the user was a participant in a multi participant scheme where not all information and documents had been requested. [Cornerstone] agreed that this would be the likely scenario. [The Respondent] said he would like to have some further comfort on this matter and asked that if he were to write to Cornerstone via RPC … stating that it was not his intention to ask for documentation in all cases, but only on a sample basis, would Cornerstone and their clients be prepared to accept this. In other words [the Respondents] wanted something in writing that Cornerstone … agreed that the sample basis was a pragmatic approach to dealing with this multi participant scheme. [Cornerstone] said that they would be happy to agree to this in writing."

16. By letter dated 15 November 2012 the Respondents wrote to RPC. The letter states:

> "One of the areas we discussed was the matter of requesting information and documents in all the [variants of the planning scheme]. It had been agreed earlier with your clients that SI Glasgow would not request information and documents in all cases because of the numbers involved and the fact that the cases were all very similar. HMRC would only request information and documents from a sample of clients. This would save resources for both HMRC, your client and, ultimately, their clients. However, it is, of course, within Cornerstone's clients' rights to request a closure notice at any time. Should a client who had been advised by HMRC that they would not be requesting information or documents do so, then clearly HMRC would need to go to the tribunal to request further time in order to obtain the information and documents required. Can you please ask your client to confirm in writing that this is their understanding of the agreement with HMRC? This is, that HMRC would not be requesting information and documents in all cases that your client was content with this approach."

17. RPC responded on 21 November 2012 stating: "Our client [Cornerstone] has confirmed to us that your understanding of the agreement between SI Glasgow and our client in relation to the requesting of information and documentation (as referred to in your letter), accords with its understanding of the position."

18. Following this exchange of the order of 70 users were identified and full disclosure was made to the Respondents. One of those cases, that involving Milltown Limited and the Albert House Property Finance PCC is now the subject of litigation. The Respondents issued closure notices in relation to that matter to all the participants including the PCC.

19. On 23 October 2013, following the judgment of the First-tier Tribunal in *Project Blue Limited*, the Respondents wrote to the Applicants in identical form save for the identification of different sums of tax considered to be due. The letters identified themselves as a "Settlement Invitation" and provided:

> "A recent Tax Tribunal judgment has supported HMRC's interpretation of Stamp Duty Land Tax ("SDLT") law and decided that the scheme used in the case of Project Blue Limited v Commissioners of HMRC does not work.
>
> Cornerstone Tax Advisors has informed us that you have used the same scheme as Project Blue Limited to reduce SDLT on your property purchase. HMRC's view is that the scheme that you have used does not work and that tax and interest is due on this transaction.
>
> **What you need to do now**
>
> **I invite you to withdraw from the scheme and make payment of £….**
>
> …….
>
> **What will happen if you do now withdraw from the scheme?**
>
> Our intention is to bring all similar cases before the Tribunal. … If you do not withdraw from the scheme, in preparation for a Tribunal hearing, I need you to supply all the documentation detailed in the attached schedule by **29 November 2013**"

The schedule listed 18 categories of document including transactional documents, information in connection with the PCC, evidence concerning the flow of funds and the Cornerstone steps plan.

20. Cornerstone prepared on behalf of the Applicants a response to that letter, it is clear that Goring-Thomas sent the letter, it is unclear whether Frosh/Royce did so. The letter objected to some of the contents of the Respondents' letter not set out above and stated that the 30 days required to provide the requested information was unreasonable given the delay on the part of the Respondents in progressing the enquiry and that it was unreasonable to expect a response before 31 January 2014.

21. Neither Applicant provided a substantive response nor did they provide the information and documentation requested by 31 January 2014.

22. On 11 August 2015 the Respondents again wrote in identical terms to the Applicants. This letter provided:

> "I am writing to you as a user of a Stamp Duty Land Tax (SDLT) avoidance scheme. I am now offering you an opportunity to put this issue behind you. ….
>
> If you choose not to take advantage of this opportunity, your case will be progressed towards litigation at the Tax Tribunal. To help you make your mind up you should be aware that:
>
> **We do not believe that your scheme works and we remain committed to challenging it.**
>
> ….
>
> We do not believe the scheme works in the way it was intended and are committed to challenging your use of this scheme. If necessary we will seek information from you and ultimately take your case to the Tax Tribunal but we would rather talk to you about settling the case.
>
> ….
>
> If you choose not to settle then our challenge will inevitably involve litigation of this scheme. …"

23. Following receipt of these letters on 14 December 2015 the Applicants submitted the applications for closure notice under consideration by the Tribunal.

24. By letters dated 15 January 2016 the Respondents wrote to Cornerstone indicating that the applications submitted "invalidated" the agreement set out in the correspondence referred to at paragraphs 15 – 17 above and indicating that the Respondents had insufficient documentation upon which to base a closure notice with the consequence that there was "no reason to postpone the issue of information notices to the taxpayers".

25. Cornerstone responded to these letters in an undated letter received by the Respondents on 21 January 2016. The letter indicated that the issue of information requests was unnecessary and unhelpful. The Respondent's reply dated 22 January 2016 invited particularisation as to why information and documentation should not be provided if closure notices were to be issued. On 22 January 2016 the Respondents also wrote to the Applicants in the following terms: "If you do not provide the documentation and information requested I intend to make an application to the First-tier Tribunal for permission to issue an information notice pursuant to Schedule 36 of the Finance Act 2008. The attached shows what I need". The schedule attached was not in the same terms as that attached to the letters dated 23 October 2013 but was broadly similar. The letter went on "I am giving you a reasonable opportunity to

make representations to say why you think you should not have to give me what I have asked for. If we cannot agree I will give the tribunal a summary of anything you have to say."

26. Cornerstone challenged on behalf of the Applicants the Respondents' timeframe for response. The Respondents agreed to extend the time for provision of the information and documentation. Correspondence continued but the informal request for information and documentation was not complied with.

27. The only information and documentation provided by the Applicants is contained in the files prepared for the hearing of this application. It does not meet the requirements of either the 2013 schedule or the 2016 schedule in full though clearly there has been partial disclosure. During the hearing, though it was asserted that some of the information pertained to the PCC and was not therefore within the control of the Applicants, such information had been fully disclosed by Cornerstone on behalf of the 70 or so users of the planning scheme that had been the subject of the sampling exercise.

The law

28. Finance Act 2003 Schedule 10 provides the provisions for opening and closing enquiries into an SDLT return.

29. Paragraph 12 permits the Respondents to give notice of their intention to open an enquiry. Such an enquiry must be opened within 9 months of the filing date of the return.

30. Pursuant to paragraph 23 an enquiry is closed when the Respondents give a closure notice stating that they have completed their enquiries and their conclusions. A closure notice must either state that in the opinion of the Respondents there is no amendment of the return required or make the amendments of the return required to give effect to their conclusions.

31. The purchaser can apply to the tribunal pursuant to paragraph 24 for a direction that the Respondents give a closure notice.

32. The jurisdiction of the tribunal to grant the direction is set out in paragraph 24(3):

> "the tribunal hearing the application shall give a direction unless satisfied that the [HMRC] have reasonable grounds for not giving a closure notice within a specified period"

33. The provisions for the giving of a closure notice, and the jurisdiction of the tribunal to direct that one be given are in identical terms to those that apply to income and corporation taxes.

34. Schedule 10 Finance Act 2003 also has provisions for the issue of discovery assessments akin to those for income and corporation taxes. These provisions are

contained in paragraphs 28 – 32. The power to assess arises in the circumstances specified in those paragraphs. An assessment is distinct from an amendment to a return undertaken in accordance with paragraph 23 when a closure notice is given.

The Applicants' submissions

35. The Applicants contends that the issue of a closure notice is a defining moment in an enquiry process as it brings the enquiry to an end and enables the parties to move forward to the next stage, be that settlement or an appeal to the Tribunal.

36. By reference to the case law set out below, the Appellant made three propositions:

(1) All enquiries must come to an end at some point – the Applicant referred to *Andreas Michael v HMRC [2015] UKFTT 577*.

(2) The test to be applied is whether, on an objective view, it is appropriate to require the issue of a closure notice – in *Estate 4 Ltd v HMRC [2011] UKFTT 269* the tribunal observed that close scrutiny of the questions put to the taxpayer and its advisors, the information provided in response and its adequacy and the extent to which it appears to the tribunal that further enquiry would produce information enabling the taxpayer's liability to be adjusted was necessary.

(3) The Respondents do not need to be certain of the accuracy of their position before they issue a closure notice – in *Tower MCashback LLP v HMRC [2011] UKSC 19* the Supreme Court indicated that a more general closure notice will be appropriate in complex factual or controversial cases the tribunal then managing the process in order to manage any potential unfairness.

37. The Applicants contended that the Respondents are fully aware of the nature of the planning scheme used by them. The arrangements are broadly the same as those used and adjudicated upon in the case of *Project Blue Limited* and substantially identical to those advised upon by Cornerstone and the subject of ongoing litigation in relation to Milltown Limited.

38. It is further contended that by reference to the settlement invitation of 23 October 2013 it is clear that the Respondents have taken a view both as to the conclusions to be drawn as a consequence of the enquiry and the amount by reference to which the returns are required to be adjusted.

39. The Applicants stopped short of contending that the settlement invitation amounted to a closure notice (no doubt because to have done so would have meant that application would have been one for a late appeal rather than a closure notice). However, by reference to the judgment in *Dr Vasiliki Raftopoulou v HMRC [2015] UKUT 579* the Applicants contended that the settlement invitation clearly indicated that the Respondents had "nailed their colours to the mast" in relation both to the substantive technical issues and indeed the required amendments to the returns.

40. It is the Applicants' view that the information requested by the Respondents is not a basis for refusing to close the enquiry as it is material that will be disclosed in

the ordinary course of the appeal which will follow or can be the subject of a disclosure request pursuant to the case management of that appeal.

41. As the enquiries have been open for 5 years, the Respondents are in a position to make an informed judgment as to both the liability and amount of SDLT they consider to be due it is only reasonable to require that they close the enquiries.

Respondents' submissions

42. The Respondents state that they are more than content to close the enquires within a reasonable time after the provision of the information they have requested. They referred to the approach taken by the tribunal in *Price v HMRC [2011] UKFTT 624* in which in circumstances very similar to those in the present application the tribunal had refused to direct the giving of closure notices despite the fact that the information had been provided by the applicants in that case, albeit only 2 days before the hearing. Like the present case, *Price* had also concerned arrangements affecting a large group of taxpayers where there had been an agreement that the Respondents would investigate by reference to a sampling exercise and in respect of which there had been a delay pending the outcome of test case litigation.

43. In *Price* it was highlighted that although the Respondents have the power to issue closure notices in broad terms they are not bound to do so. The tribunal in that case explicitly stating:

> "10. …. On the contrary HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision on 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 require for the purpose of checking a tax return. …
>
> 11. If [the applicants] were correct that HMRC have no reasonable grounds to refuse to issue a closure notice were they have not yet been provided with all the relevant information about the scheme … because they can make an assessment in any event, this would mean HMRC do not reasonably require the information for the purpose of checking the tax return. This would in effect compel HMRC to issue assessments based on far less than full facts and be unable to obtain those unless and until HMRC obtained a disclosure order in proceedings.
>
> 12. This is clearly not the proper interpretation of the legislation. The taxpayer is not given a right to keep back facts or documents material to the correctness of his tax return. HMRC are entitled to them if they are reasonably required for checking a tax return. And if such relevant documents are not forthcoming … HMRC have reasonable grounds for not issuing a closure notice"

44. The Respondents also drew a parallel between the arguments being run by these Applicants and those that were unsuccessful in the appeal of *Finnforest UK Ltd and others v HMRC [2011] UKFTT 342*. The Finnforest arrangements concerned a complex factual matrix and a claim to cross boarder group relief. Like the present Applicants Finnforest essentially contended that the Respondents had already formed their view to refuse the claims and that there would be no prejudice or disadvantage to in deferring the extensive disclosure exercise until the litigation process. The motivation for the Finnforest application appeared to be that one of the substantive issues could be determined without the detailed information requested by the Respondents and they wanted that matter resolved before the extensive disclosure and evaluation exercise. The tribunal however determined, in accordance with the judgment in *HMRC v Vodafone 2 [2006] STC 483* the factual enquiry was appropriate before a closure notice and a determination of the technical issue.

45. In the Respondents' submission they cannot close the Applicants' enquiries on the basis of information and documentation of other users of the scheme. They highlight that there are significant implementation differences between *Project Blue Limited* and *Milltown Ltd* highlighting that in *Milltown Limited* it is contended that a pre-requisite of for a QFI is not met by the PCC used by Milltown and that some of the documents are not executed properly. These type of implementation failures could arise in the Applicants' cases or not but they are highly relevant to the basis on which the closure notice is issued.

Evaluation

46. The parties agree that:

(1) There is a statutory presumption that the Tribunal will make a direction for closure.

(2) The burden of proof is on the Respondents to show that it has reasonable grounds for not issuing a closure notice within a specified period.

47. The application is for the "immediate" closure of the enquiry. The Tribunal is to determine whether the Respondents have reasonable grounds for not issuing a closure notice within the time specified i.e. immediately. The Tribunal heard no submission on whether there should be any other period specified.

48. The Respondents contend that they have reasonable grounds that substantiate their resistance to issuing closure notices, namely the Applicants' failure to have provided the information and documentation which has been requested by the Respondents. The Respondents say that when that information is provided it will be considered and if there is unreasonable delay in the issue of closure notices after the production of the information and documentation it will be open to the Applicants to make a further application.

49. The Applicants say that the Respondents do not need the information and documentation, they have all they need to close, after all they felt confident enough to issue the settlement invitation letters.

50. The issue of a closure notice is significant:

(1) It closes the enquiry, sets out the conclusions of the Respondents and where appropriate and necessary amends the return, where additional tax becomes payable as a consequence of the amended return the Respondents can, after the 30 day appeal period, proceed to collect that tax

(2) Once, in the case of SDLT, a purchaser receives a closure notice they may appeal to the Commissioners and subsequently to the First-tier Tribunal, as noted in *Eclipse Farm Partnerships No 35 v HMRC [2009] STC 293* the scope of any appeal will be shaped and limited by the terms of the closure notice it defines "the battle ground" for an appeal.

51. As set out in *Vodafone 2* there is a balance to be struck when determining whether the issue of a closure notice should be directed. Clearly, one can be issued before the Respondents have concluded every conceivable line of enquiry open to them however, the enquiry should have been conducted to the point where an informed judgment can be taken so that the Respondents may state their conclusions and amend the return as necessary.

52. Prior to the production of the documents bundles for the Application hearing the Respondents had been provided with the SDLT returns for each participant in the planning scheme and for each transaction together with correspondence from Cornerstone which confirmed the homogenous nature of each of the transactions on which Cornerstone had advised and their similarity to the Project Blue planning. The tribunal bundles included some documentation requested by HMRC but by no means all of it. The Applicants accept that they have not provided any material pertaining to the PCC but do not deny that whilst it is strictly speaking documentation relating to the tax affairs of the PCC they do, via Cornerstone, have access to it and it is documentation that was provided in the sample enquiries.

53. Despite this lack of information, on two separate occasions, the first in October 2013 and the second in August 2015, the Respondents have invited the Applicants to settle the scheme and pay outstanding tax and interest which they have been able to calculate.

54. At the hearing the representative for the Respondents explained that the Respondents had taken the view that the *Project Blue* case was as close to perfect implementation as was possible. As is clear from the Project Blue case itself the statutory provisions were aimed at ensuring that there was no double charge to SDLT arising from sharia compliant financing. Ms McCarthy asserted that following both the First-tier Tribunal and Upper Tribunal judgments the Respondents position had been that even without implementation issues the arrangements had failed and it was therefore reasonable to assume that any matter below this high water mark too would be unsuccessful. It was therefore reasonable to invite the Cornerstone users, including the Applicants to consider settlement of the SDLT and interest which would fall due on a complete failure of the arrangements.

55. Ms McCarthy was also keen to remind the Tribunal that, unlike Project Blue, in relation to all of the Cornerstone implementations, including those of the Applicants enquiries had been opened into not only the purchasers but also the QFIs.

56. The difficulty in the present case is undoubtedly caused by the Respondents optimism upon winning in the First-tier Tribunal and then again at the Upper Tribunal in *Project Blue* that they had enough of a basis to drive settlement of the enquiries without having to investigate. Perhaps for perfectly understandable reasons they wanted to minimise the resources allocated to this particular multi participant planning scheme.

57. The letters were written to the users of the scheme and not Cornerstone and there is no evidence as to the visibility to those users of the agreement reached between the Respondents and Cornerstone regarding the sampling exercise. As a consequence, and despite the agreement with Cornerstone regarding sample investigation and the consequences of requesting a closure notice, the Respondent's letters give the impression that they were, even at that time and without the disclosure of information and documentation now requested, able to draw a conclusion on the enquiry and state the amount by reference to which the SDLT return would be amended without the need for further information and evidence save in the circumstance that the user wished to appeal the matter rather than settle it. The language of the letters of October 2013 and August 2015 makes such an impression one that it was entirely reasonable for the Applicants as to draw.

58. This Tribunal must strike the balance advocated in *Vodafone 2* and determine whether the Respondents' resistance to closure prior to the receipt of the requested information and documentation is reasonable in light of the impression conveyed by their settlement invitation letters.

59. In this regard the Tribunal reflects on the fact that despite the settlement invitation letters being sent to the Applicants it is clear that they were, at all times, advised by Cornerstone. Cornerstone prepared the replies to be sent to the Respondents by the Applicants. Cornerstone are tax advisors who also appear to have the benefit of advice from reputable tax litigation and advisory solicitors and together they were fully aware of the agreement that had been reached most specifically the Respondents' expressed feeling of vulnerability regarding a request for closure notice from a user who had not been part of the sampling exercise. The impression given to the Applicants by what were, in the Tribunal's view, ill drafted letters by the Respondents, must be contextualised by the involvement of Cornerstone.

60. Once the settlement letters are put in their proper context it is absolutely clear that the Applicants have not met the informal information requests of the Respondents. For the purposes of this hearing they provided some documentation but the Respondents clearly have insufficient information and documentation concerning the detailed implementation of the scheme which would enable them to draw anything more than a high level conclusion on its efficacy.

61. As indicated above the closure notice lays the battle grounds for any subsequent appeal. If a closure notice were ordered immediately as requested by the Applicants it could do no more than preserve the Respondents' position pending any appeal in Project Blue but could not conclude on any implementation matters which would open the Applicants rather than the PCC open to a liability to SDLT. Particularly given the current position of the case law on the underlying technical issues on the application of s45A and 71A Finance Act 2003 the absence of the information and documentation requested is critical. To order a closure notice would result in the inappropriate shifting of matters properly to be determined by the Respondents to case management for the tribunal.

62. The Tribunal's jurisdiction is limited to directing a closure notice be issued within a specified period. The tribunal has no jurisdiction (absent an application from the Respondents under Schedule 36 Finance Act 2008) regarding the disclosure of the information and documents. The Tribunal therefore has no jurisdiction to set a time frame for closure pending the requested disclosure. The speed with which a closure notice will be issued is largely in the Applicants own hands, Through the course of correspondence concerning disclosure the Respondents have expected the Applicants to act within 21 and 28 days. Given the similarity of the issues and the fact that the Respondents have reviewed 70 Cornerstone implementations the Tribunal hopes if the Applicants fully meet the disclosure request the Respondents would evaluate the material and act appropriately within a reasonable time frame.

Decision

63. For the reasons set out in paragraphs 46 – 62 the Application for the immediate issue of a closure notice is refused.

64. 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.

Amanda Brown
TRIBUNAL JUDGE

RELEASE DATE: 8 August 2016