



[2021] UKFTT 0296 (TC)

TC08238

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal number:
TC/2020/03978/03979/03980/04127/P**

**DECISION
ON AN APPLICATION FOR PERMISSION TO
APPEAL
IN THE CASE OF**

GEARSLUTZ LTD AND JULIAN STANDEN

Appellants

-and-

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

Respondents

1. On 11 May 2021, the Tribunal issued the decision in this appeal (“the Decision”). On 6 July 2021, the Respondents made an in-time application to appeal the Decision.
2. I considered in accordance with Rule 40 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 whether to review the Decision but decided not to undertake a review as I was satisfied there had been no error of law in the decision.
3. The application is refused for the following reasons:

(1) The first ground of appeal - that the incorrect test was used – is incorrect. The correct test set out in section 28A (5) TMA 1970 was used, namely whether there are reasonable grounds for not directing the issue of closure notices. The initial burden of proof rests with HMRC. The guidance of Mr Justice Adam Johnson and Judge Tom Scott in the Upper Tribunal in *Embiricos v HMRC* [2020] UKUT 0370 (TCC) at para 33 and that Judge Sadler in *Eclipse v Partnerships No 35 LLP v Commissioners for HMRC* [2009] STC (SCD) 293 at [19] is that a closure notice should be issued only when the enquiry had reached a point that an informed decision can be made by the officer on the issues. This is not such a case. An informed decision cannot yet be reached. The issues in this case depend in part on issues of valuation and characterisation of IP acquired in 2012. There are obvious, unusual and in some respects unexplained features about the amortisation such as the absence of a contemporaneous valuation or written sale and purchase agreement, the retrospective amendment in 2015 of that agreement and the associated cancellation of dividends, and partly also on the calculation of profit before amortisation in GSL. The latter issue came to light when new accounting advisors Norwoods were appointed to replace Optimal to prepare the financial statements for the period ended 29 April 2018. In preparing those accounts Norwoods had to restate the comparative figures for 2017. The financial statements for 2017 prepared by Optimal showed turnover of £317,169 and profit of £67,232 whereas the restated accounts showed turnover of 534,872 and profit of £192,130, (see the ante pre-penultimate paragraph of

HMRC's letter to GSL dated 11 December 2020, on page 155). It is reasonable to consider that the accounting issue identified by Norwoods may adversely affect the position of GSL in the periods ended 29 April 2015 and 2016, and Mr Standen's position in 2015. Neither GSL nor Mr Standen has produced any explanation of these issues and the very substantial accounting differences, (see the penultimate paragraph of HMRC's letter to GSL of 11 December 2020 at page 156). There is the further issue of whether the undeclared profits represent payments to Mr Standen. In these circumstances, HMRC is not in a position to make an informed judgement and state its conclusions in respect of GSL or Mr Standen. It is reasonable for HMRC's enquiries to continue into GSL and Mr Standen to ensure the corporation tax is correctly assessed on GSL and income tax is correctly assessed on Mr Standen. There are reasonable grounds for refusing the application for the issue of closure notices.

(2) The second ground of appeal – that HMRC was in a position to make an informed decision as set out in HMRC's letters to each Mr Standen and GSL of 11 December 2020- is incorrect. In each case the officer makes clear he is giving HMRC's view on the basis of evidence then held (see the letter to GSL on page 157 of the bundle and letter to Mr Standen at page 96 of the bundle). It does not follow from the fact that the officer has views or suspicions that he is in a position to make an informed decision. I consider that in the absence of the information HMRC requested of Mr Standen at page 7 of 11 December 2020 letter at page 98 of the bundle) and the information requested of GSL at pages 7 and 8 of the letter to GSL dated 11 December 2020 (at page 159 and 160 of the bundle), HMRC officer was not in a position to make an informed decision about the respective liabilities of Mr Standen for 2014-2015 and GSL for the periods ended 29 April 2015 and 2016. Accordingly, there were reasonable grounds for HMRC to refuse to issue closure notices in respect of the enquiries into the returns of Mr Standen and GSL for those periods.

(3) The third ground of appeal – that by referring to the unwind of the dividend caused the tribunal to make an error of fact- is incorrect. The claims for amortisation and the amount of those claims for GSL in the periods ended 29 April 2015 and 2016 are dependent on the retrospective amendment in 2015 of the agreement to transfer the business assets to include Intellectual Property, which was inextricably bound up with the cancellation of the dividend. This is relevant factual background to the determination of profits of GSL and, potentially, the income of Mr Standen in 2014-2015, notwithstanding that the HMRC investigation is into the profits of GSL for the years ended 29 April 2015 and 2016 and Mr Standen's self-assessment return for 2014-15.

(4) The fourth ground of appeal – that the Tribunal came to the wrong conclusion on the "VASA" payment (which is short for variation and settlement agreement) because it was no longer in dispute between the parties that it was not deductible in the accounts of GSL - is incorrect. The VASA forms part of the relevant factual background notwithstanding that the Appellant now accepts that the item is not a legitimate deductible business expense. The mere fact that accounts and the returns of GSL for the period ended 29 April 2014 had included as a deductible item a payment called a VASA to Mr Standen's ex-wife, when there was no such agreement, when the payment was in fact a payment to Mr Standen's his ex-wife to discharge Mr Standen's personal obligation under a divorce settlement, and it was not even paid in the period ended 29 April 2014, when coupled with the restated accounts prepared by Norwoods for the period ended 29 April 2017 which indicate the that turnover and profits for that period had been under declared in the 2017 accounts prepared by Optimal, signed by Mr Standen and filed by GSL, mean that HMRC are not in a position, without making further enquiries, to make

an informed decision about the matters in dispute. HMRC were not in possession of sufficient facts to make an informed judgment and state conclusions in relation to GSL's returns for the periods ended 29 April 2015 and 2016.

4. If the applicant is dissatisfied with the outcome of this application for permission to appeal the decision in this appeal, the applicant has a right to apply to the Upper Tribunal for permission to appeal the decision in this appeal. Such an application must be made in writing to the Upper Tribunal at 5th Floor, Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL no later than one month after the date of this notice. Such an application must include information as explained in the enclosed guidance booklet *Appealing to the Upper Tribunal (Tax and Chancery Chamber)*.

Heather Gething
TRIBUNAL JUDGE

RELEASE DATE: 18 AUGUST 2021