



**TC01662**

**Appeal number: TC/2010/07697 and 07244 and  
TC/201/04648 and TC/2011/0464**

*Application for a closure notice – Section 28A Taxes Management Act 1970-  
whether reasonable grounds for not issuing a closure notice – held yes –  
application dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**RODERICK THOMAS**

**Appellants**

**STUART THOMAS**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE GUY BRANNAN**

**Sitting in public at 45 Bedford Square, London WC1 on 27 September 2011 with  
written submissions from the Appellants dated October 2011 and 11 November 2011  
and written submissions from the Respondents dated 28 October.**

**The Appellants appeared in person**

**Mr Stewart, HM Inspector of Taxes, appeared for the Respondents**

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## DECISION

1. This is an application by the Appellants for closure notices under section 28A TMA 1970 in respect of the tax year ended 5 April 2007.

5 2. Initial submissions were made at a hearing on 27 September 2011, but because of lack of time it was agreed that written submissions would be made by the Appellants and the Respondents ("HMRC").

3. Section 28A of the Taxes Management Act 1970 ("TMA") provides:

10                   "(4) The taxpayer may apply to the Commissioners for a direction requiring an officer of the Board to issue a closure notice within a specified period.

(5)...

15                   (6) The tribunal shall give the direction applied for unless... satisfied that there are reasonable grounds for not issuing a closure notice within a specified period."

4. In short, therefore, I must direct that HMRC issue a closure notice unless HMRC satisfy me, in accordance with Section 28A, that there are reasonable grounds for not issuing a closure notice.

5. The background to these applications is quite complex, but I shall briefly set out the material facts, as I understand them.

6. There are appeals pending (SC/3012/06253 and SC/3013/2008) before this Tribunal in respect of the tax year 2002/2003. An issue which arises in those appeals is whether the Appellants are the settlors for tax purposes of the McLennan Trust ("the Trust"). The trustee of the Trust is Newhaven Trust Company (Channel Islands) Limited ("Newhaven"). In the papers before me, the Appellants are described by Newhaven as members of "the beneficial class."

7. The Trust owned an investment company called Bala Limited ("Bala").

8. On 7 March 2008, the Special Commissioner (Dr Brice) directed in relation to the appeals in respect of 2002/03 that the Appellants supply HMRC with copies of the financial statements (or similar documents) for the year ending 31 December 2005 for the Trust and Bala. If such documents were not in the possession or power of the Appellants they were to supply evidence that they had used their best endeavours to obtain such documents.

9. On 1 May 2008, the Appellants supplied Bala's (unaudited) accounts for the period 1 January 2006 to 31 March 2007. Those accounts contained comparative figures for the period ended 31 December 2005.

10. The 31 March 2007 Bala accounts referred to debtors of £1,293,963 at 31 December 2005. The accounts also referred to a loan of £1,289,066 being written off in the period to 31 March 2007.

11. The Appellants also provided financial statements for the Trust for the period 27 August 1997 (the date on which the Trust was established) to 31 December 2006.

12. By comparing the Trust's accounts for the period referred to in paragraph 10 above to those for the period 27 August 1997 to 31 December 2003 (provided by the Appellants in May 2004) HMRC noted that interest income in the three years to 31 December 2006 was £8760.

13. In addition, the Trust accounts for the period ended 31 December 2006 referred to a profit on the disposal of investments of £393,984. HMRC deduced that those profits arose in the three-year period ending 31 December 2006. HMRC further noted, from a schedule attached to the Trust's accounts, for the period ended 31 December 2006, that there were three disposals which were relevant. HMRC contend that their research into stock market values indicates that two of the three disposals were in 2005/06 and a third disposal could have been in either 2005/06 or 2006/07. In HMRC's view there was no evidence to suggest that any of the disposals took place in the tax years 2003/04 or 2004/05.

14. On 21 November 2008, HMRC wrote to the Appellants requesting that they obtain and provide copies of documentation relating to the three disposals to show the dates of the disposals.

15. Mr R Thomas provided a letter from Newhaven dated 4 December 2008 advising that there were no gains arising in the Trust in the period to 5 April 2005. However, no documentation was provided in respect of the three disposals referred to above.

16. HMRC wrote to Newhaven on 9 July 2009 enclosing a copy of the Trust accounts for the period 31 December 2006 and asked Newhaven for details of the profits and gains on share disposals but each tax year between 1 January 2004 and 31 December 2006. Newhaven replied by stating that it thought it more appropriate for the appeal in respect of earlier tax years (which raised the question whether the Appellants were settlors of the Trust) was determined first since this might render further investigation otiose.

17. HMRC wrote a further letter to Newhaven on 28 September 2009 which again requested the above information. Newhaven replied on 1 October 2009 stating that they had been advised that any liability had been settled under the terms of a contractual settlement of 24 May 2004.

18. In HMRC's view (which the Appellants contest), the Appellants were the settlors of the Trust, so that any gain would be treated as accruing to the Appellants, pursuant to section 86 TCGA 1992. HMRC, therefore, assessed the Appellants on 1 April 2010 on the alleged gain in respect of the three disposals. Those assessments charge the full amount of the gain of £393,984 in the tax year ended 5 April 2006. HMRC stated that they raised the assessments on the basis that there was evidence that two and, possibly, three of the disposals may have taken place in that tax year.

19. On 16 January 2009 HMRC issued enquiry notices to each Appellant under section 9A TMA for 2006/07 i.e. the tax year to which these applications relate.

20. The Appellants have provided information and documents to HMRC in relation paragraphs 3, 4 and 5 of the enquiry notices in relation to Mr R Thomas. HMRC have confirmed that they would be in a position to issue a closure notice in respect of those matters.

5 21. As regards paragraphs 1 and 2 (which were in substantially identical terms in respect of each Appellant) the position is as follows. In paragraph 1 of the enquiry notices each Appellant was requested to provide details of disposals and acquisitions of the Trust in the year ended 5 April 2007. Paragraph 2 of each notice required each Appellant to provide the financial statements of the Trust for the year ended 31  
10 December 2007.

22. On the day of the hearing of this application on 27 September 2011, the Appellants provided information relating to the capital gains of the Trust in the three months to 5 April 2007 but, according to HMRC, have not provided details of capital gains in the nine month period from 6 April 2006 to 31 December 2006. Although  
15 HMRC have assessed against in the Trust in the tax year ended 5 April 2006 to the best of the information available to them and on the basis of their research on stock market values, that research suggested some uncertainty as to whether the full amount of the gain assessed for 2005/06 arose wholly in that year or whether some part of it related to 2006/07. HMRC accept that the same item of income or gain assessed both  
20 in 2005/06 and 2006/07 cannot be taxed twice.

23. HMRC contend that they have not been provided with sufficient details of income and gains of the Trust in 2006/07 in a form which would allow them to quantify such income or gains in respect of that year.

24. HMRC submit that the Appellants have power to obtain such information. They  
25 note that the Appellants were able to obtain information for the three months to 5 April 2007. HMRC also note that the Appellants were able to obtain information from Newhaven concerning the write-off of a loan from Bala to the Trust.

25. The Appellants contend that they have supplied HMRC with the information requested in respect of 2006/07. There was, however, no indication that they have  
30 supplied information in respect of the nine month period from 6 April 2006 to 31 December 2006.

26. The Appellants also contend that HMRC are responsible for the delay in progressing the appeals in respect of 2003/04 which would have determined the issue whether the Appellants were the settlors of the Trust. HMRC denied that they have  
35 been responsible for the delay and attribute responsibility for such delay to the Appellants.

27. The Appellants also argue that HMRC had, by their conduct, previously accepted the Appellants' contention that they were not settlors of the Trust and had failed to invoke their extensive information gathering powers. HMRC denied this.

40 28. Additionally, in relation to Mr S Thomas, HMRC contends that they have requested (by letter of 9 April 2010) that the Appellant supply an invoice in respect of

certain expenditure relating to the installation of a kitchen charged in the accounts of a company called Spring Capital Limited. HMRC say that they wish to satisfy themselves that the kitchen installation was not the provision of a benefit in kind to the Appellant (Mr S Thomas). HMRC stated that they have not been provided with this invoice. The Appellant (Mr S Thomas) contends that this was expenditure incurred by Spring Capital Limited and that he, therefore, does not have an invoice amongst his personal papers. The Appellant noted that this matter formed part of a CTSA enquiry into Spring Capital Limited to the period ended 30 April 2007. The Appellant also states that HMRC issued a closure notice to the company on 18 June 2010 and allow the expenditure as a deductible expense. In addition, HMRC subsequently closed the company's PAYE scheme because it was accepted that there was no outstanding liability for PAYE or NIC.

29. Finally, also in respect of Mr S Thomas, HMRC said that they understood that Spring Capital Limited had acquired a motor vehicle costing £22,647 in October 2006. The Appellant has been asked by HMRC to provide a technical analysis as to why no benefit in kind arises. As far as I understand, there is no further factual information requested from the Appellant. The Appellant states that HMRC has all the information necessary as a result of its CTSA enquiry into Spring Capital Limited's return for the period ended 30 April 2007. The Appellant considers that he has provided the necessary explanation and that it is now up to HMRC to decide whether to issue an assessment, there being no further factual information requested.

### **Decision**

30. I have decided to refuse the application for a closure notice in respect of each Appellant.

31. Having carefully reviewed the background papers and the submissions of the parties, I have concluded that HMRC do not have enough information accurately to compute any gain or loss arising in the tax year 2006/07 in respect of disposals arising in the Trust. It is true that the Appellants have supplied HMRC with financial statements of the Trust for the period 27 August 1997 to 31 December 2006 and have also advised HMRC on 27 September 2011 that capital gains for the three month period ended 5 April 2007 were £8280. However, as HMRC point out, the Appellants have not provided the information in respect of disposals and capital gains for the nine-month period to 31 December 2006 in sufficient detail to enable HMRC to compute the calculation of gains and losses in that period. For example, it is not clear to me when the disposals recorded in the schedule to the accounts of the Trust actually occurred. In my view, therefore, there are reasonable grounds for HMRC not to issue a closure notice in respect of the tax year 2006/07 in respect of both Appellants.

32. I should, for completeness, deal with the issues relating to the kitchen expenditure or the vehicle expenditure. In the case of the kitchen expenditure, I was not satisfied that HMRC had been provided with sufficient information by the Appellant in respect of this matter. I therefore consider that this is a further ground justifying HMRC's refusal to issue a closure notice in respect of this Appellant. In respect of the vehicle

expenditure, there is no outstanding information or documents required of the Appellant. All that has been requested is a technical analysis. This cannot be sufficient to justify the refusal to issue a closure notice.

5 33. In respect of the appeal (relating 2002/03) both parties accused the other of delay. It is not appropriate for me to comment on these contentions in relation to an appeal which is not before me, but I express the hope that the parties to move swiftly to a hearing or other resolution of that appeal.

34. For the reasons given, I dismiss the application made by each Appellant.

10 35. 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  
15 “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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**GUY BRANNAN**

**TRIBUNAL JUDGE**

**RELEASE DATE: 14 December 2011**

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