



TC01759

Appeal number TC/2011/6875

*INCOME TAX – closure notice – section 28A Taxes Management Act 1970
– joint working with VAT and PAYE – investigation relating to several taxes
but closure notice relating to only one aspect – whether income tax enquiry
should be closed - application dismissed*

FIRST-TIER TRIBUNAL

TAX

SAU KWAN HUAN

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ALEKSANDER
A HUGHES**

Sitting in public at 45 Bedford Square, London WC1 on 6 December 2011

Michael Feng of Feng & Co for the Appellant

Gloria Orimoloye, an officer of HM Revenue and Customs, for the Respondents

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DECISION

1. The Appellant applies for a closure notice in respect of an HMRC enquiry into her affairs. HMRC had made a cross-application that closure notice application be struck-out, but this was withdrawn at the hearing.

2. The Appellant is represented by Michael Feng, and the Respondent by Gloria Orimoloye. We heard evidence from Christine Daniells, the officer of HMRC leading the enquiry, and in addition had bundles of written evidence.

3. In March 2010 the Respondents (“HMRC”) opened an enquiry into the self-assessment income tax return of the Applicant (“Mrs Huan”) for the tax year 2008-09 pursuant to s9A Taxes Management Act 1970 (“TMA”). On 18 April 2011 the Appellant, Mrs Huan, applied to the Tribunal for an enquiry closure notice pursuant to s 28A TMA.

4. Section 28A(4) provides, “The taxpayer may apply to the [tribunal] for a direction requiring an officer of [HMRC] to issue a closure notice within a specified period.” Section 28A(6) provides, “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.”

5. Following a hearing on 19 July 2011 the Tribunal refused the Appellant's application for a closure notice, and in doing so gave the following reasons:

7. It is increasingly common for HMRC to work enquiries simultaneously across several areas such as income tax, VAT, and employer compliance. That is a sensible approach which attempts to minimise the disruption to a taxpayer's business by avoiding the same questions being asked on different occasions by separate enquiry teams. However, there are separate legislative provisions applicable to the different types of enquiry and so an application to this Tribunal must be considered in the context of the part of the exercise that is covered by the application.

8. HMRC are investigating Mrs Huan's tax affairs in relation to income tax, VAT and employer compliance for a period extending over several years. Mrs Huan's application to this Tribunal is made under s 28A TMA and concerns the s 9A income tax enquiry relating to the tax year 2008-09.

9. From Mrs Huan's evidence we are unclear what she is prepared to concede concerning unrecorded sales. But from the documents available to us we conclude (a) she has stated to HMRC that the business had been run on the same basis since approximately 2000; and (b) there were unrecorded sales in 2009. From that it is reasonable for HMRC to draw the inference that the turnover shown in the business accounts for periods prior to 2009 (as well as 2009) may be inaccurate.

10. It would not be reasonable for HMRC to contend that the s 9A enquiry must remain open for the duration of HMRC's investigation of

5 the VAT records of the business. If Mrs Huan could show that the
questions being asked by HMRC were not pertinent to her income tax
position then HMRC might be in a difficult position in attempting to
resist the closure notice application. So if the only open items were
10 related to matters particular to the VAT position of her business – say,
whether certain supplies of food were zero rated or standard rated –
then we would have some sympathy with her application for the s 9A
enquiry to be directed to be closed. However, at least some of
15 HMRC's unanswered questions fundamentally affect the s 9A enquiry
– for example, the accuracy of the turnover stated in the business
accounts. We consider that HMRC are not yet in a position to form a
judgment about the income tax due for the 2008-09 tax year, and it
would be premature to order closure of the enquiry at this time.
Accordingly, as communicated to the parties at the conclusion of the
hearing, we will refuse the application.

11. It is open to Mrs Huan to make a fresh application for a closure
notice in the future. If at that time she has answered all HMRC's
legitimate questions pertaining to her income tax affairs for the 2008-
09 tax year then, even if some points peculiar to the VAT enquiry
20 remain open, the Tribunal may be persuaded that it is not reasonable
for HMRC to keep open the s 9A enquiry. But that is not the state of
affairs as of the date of this hearing."

6. On 1 September 2011 the Appellant made a fresh application for a closure notice.
25 The grounds for the application was that the Appellant had now answered all
outstanding legitimate questions pertaining to her income tax affairs for the 2008-09
tax year, and it was therefore unreasonable for HMRC to keep open the s9A enquiry.

7. Mr Feng submitted that his client had dealt with all outstanding queries relating
to income tax – in particular she had provided explanations relating to £10,000 of
30 unexplained sources of capital. Although a further information notice had been raised
by HMRC, on 19 August 2011 these had come from Mrs Murfitt, who was leading
the VAT aspects of the enquiry, and were expressed to be required to determine the
Appellant's VAT position, and not her income tax. As all the income tax enquiries had
been answered, there was no reason why the income tax enquiry could not be closed.
35 The Appellant had requested a review of the information notice, and by a letter dated
24 October 2011, the review upheld the information notice. Mr Feng informed us that
the Appellant had appealed against the review.

8. Mrs Daniells explained in her evidence that the enquiries into the Appellant's
affairs were being worked as one enquiry across all taxes, which were being led by
40 Mrs Murfitt. Mrs Murfitt was dealing with the VAT side of the enquiry, but would
also calculate the Appellant's turnover, which figure would be used in determining the
Appellant's profits for income tax. Also relevant to the income tax calculation would
be the Appellant's wage bill, which was being considered by colleagues dealing with
the Appellant's PAYE compliance. Only once the Appellant's turnover had been
45 finalised, could HMRC move on to review wages, and only after both had been
established could Mrs Daniells make an assessment of profits for income tax

purposes. Although the further information sought by the information notice of 19 August 2011 was expressed to be needed to verify the Appellant's VAT position, the results of the VAT enquiries would be used to determine turnover, which was a necessary calculation in determining taxable profits for income tax purposes.

5 9. We agree with the previous decision of the Tribunal in relation to the earlier
application for a closure notice. It would not be reasonable for HMRC to contend
that the s 9A enquiry must remain open for the duration of HMRC's investigation of
the VAT records of the business. If the Appellant could show that the questions being
asked by HMRC were not pertinent to her income tax position, then HMRC might be
10 in a difficult position in attempting to resist the closure notice application. But the
open items do not relate solely to matters particular to the VAT position of her
business – for example whether certain supplies of food were zero rated or standard
rated. Most (if not all) of HMRC's unanswered questions fundamentally affect the
s9A enquiry – for example, the accuracy of the turnover stated in the business
15 accounts. We consider that HMRC are not yet in a position to form a judgment about
the income tax due for the 2008-09 tax year, and it would be premature to order
closure of the enquiry at this time. Accordingly, as communicated to the parties at the
conclusion of the hearing, we refuse the application.

Decision

20 10. The application is refused.

11. 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
25 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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NICHOLAS ALEKSANDER
TRIBUNAL JUDGE
RELEASE DATE:18 January 2012

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