



TC04143

Appeal number: TC/2014/02273

*Application for a closure notice – enquiry into taxpayer’s return – s28A TMA 1970
whether HMRC had reasonable grounds for not issuing a closure notice – yes –
application refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BILAL KHAN

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
 MS REBECCA NEWNS**

Sitting in public at 45 Bedford Square London WC1B 3DN on 28 August 2014

Mr I Siddique, for the Appellant who did not attend

Mr S Bentley, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an application by Mr Bilal Khan t/a Sports Dimensions ('the Appellant') under s 28A (4) Taxes Management Act 1970 for the Tribunal to make a direction that a closure notice is issued within a specified period.

2. The issue for determination by the Tribunal is whether HMRC should be directed to close the enquiry and, if so, within what period.

3. We announced our decision to refuse the application at the hearing. The following is a summary of the relevant legislation, our findings of fact and reasons for the decision.

Relevant Legislation

4. Section 28A (1) Taxes Management Act 1970 provides that an enquiry under s 9A is completed when an officer of the Board issues a Closure Notice informing the taxpayer that his enquiries are complete and states his conclusions.

5. Section 28A (4) Taxes Management Act 1970 allows for the taxpayer to apply to the Tribunal for a direction requiring an officer of the Board to issue a Closure Notice within a specified period.

6. Section 28A (6) Taxes Management Act 1970 states that the Tribunal shall give the direction applied for, unless they are satisfied that there are reasonable grounds for not issuing a Closure Notice within a specified period.

The background facts

7. The Tax Return for the year ended 5 April 2011 was issued on 6 April 2011 and submitted by the Appellant on 24 January 2012.

8. An Enquiry Notice into the Appellant's return under s 9A TMA 1970 was issued on 26 July 2012.

9. An Information Notice under Paragraph 1 of Schedule 36 of the Finance Act 2008 was issued on 17 September 2012.

10. On 25 October 2012 the Appellant's agent provided HMRC with some of the information and accounting records requested.

11. On 1 November 2012, HMRC wrote to the agent to request schedules/workings of how the figures on the return were arrived at. Statements for all accounts were requested, along with outstanding records that had not been included with the information submitted on 25 October 2012.

12. On 8 November 2012, HMRC spoke to the Appellant on the telephone and was advised that he had personal accounts which he sometimes put his business money into.

5 13. HMRC met with the Appellant and his agent on 25 April 2013. Notes of the meeting and a letter covering the areas of concern, including mandates, were issued on 1 May 2013. Three points in particular were discussed at the meeting. Firstly, that the Appellant had paid a business expense using a Nat West card, which suggested that he had a Nat West bank account although he maintained that he only had a Barclays Bank account. Secondly, Child Support Agency (CSA) payments had been
10 made via an unknown account, and thirdly, money had been transferred to the USA via Western Union.

14. On 4 June 2013 the Appellant's agent confirmed that the Appellant had two, previously undisclosed, bank accounts and provided HMRC with copy bank statements, one for Nat West and another for Lloyds Bank, together with signed
15 authorisations.

15. The bank statements for Lloyds were for the wrong year and the Nat West account showed large deposits, as well as three large withdrawals of £6,000, £9,000 and £15,000. HMRC were therefore concerned whether the 2011 return was correct.

16. The Appellant and his agent were issued copies of the Human Rights and Penalty factsheets FS9, FS7a and FS15, and on 27 August 2013 HMRC requested the
20 outstanding records and further information.

17. On 23 September 2013 an Information Notice under Paragraph 1 of Schedule 36 to the Finance Act 2008 was issued to the Appellant and agent in respect of the records requested. The notice requested evidence of the source of the bank deposits and an
25 explanation of nature of the withdrawals

18. Information was received in part from the Appellant on 27 October 2013, but it did not satisfactorily address the queries that had been raised about the Nat West deposits and withdrawals. Mr Khan's agent advised that two deposits from 'LSC FCTL' and 'Proximity VE' were investments and not connected with the business. Mr
30 Khan said the three large withdrawals were payments to family members and not connected to the business. He also advised that money received from Reading College was not business income. It was money which belonged to his mother, arising from her employment with the College.

19. On 27 November 2013 HMRC once again asked for the outstanding information and records, including documentary evidence of the investments; documentary
35 evidence showing Mr Khan's mother was employed by Reading College; whether any other payments were made to his mother by the college and if so, where they were banked; if banked in her own account then copies of her statements in support; why were the large payments made to family members and what the circumstances
40 surrounding the payments were.

20. No further information was supplied by the Appellant and on 9 January 2014, an Information Notice under Paragraph 1 of Schedule 36 to the Finance Act 2008 was issued to the Appellant in respect of the records requested on 27 November 2013.

5 21. The Appellant wrote to HMRC on 4 February 2014 reiterating that the deposits from 'LSC FCTL' and 'Proximity VE' were investment returns and not connected to the business, that the large withdrawals had nothing to do with the business and that the monies from Reading College belonged to his mother and were for child care for a student studying at the college. A statement from Shana Johnson (the student) was enclosed.

10 22. HMRC wrote to the Appellant on 12 February 2014 repeating its request for documentary evidence of the investments with LSC FCTL and Proximity VE. The investigating officer said that the information was needed as HMRC were not convinced that the Appellant could make such investments out of the low profits he declared between 2006 and 2011. HMRC advised that the letter from Shana Johnson
15 was not satisfactory and that a letter from Reading College confirming that the payments were for the Appellant's mother would suffice. HMRC repeated the request for information regarding the circumstances surrounding the three large payments. Because the Appellant's letter was not a full response, HMRC advised that a penalty of £300 may be imposed.

20 23. The Appellant called HMRC on 20 February 2014 to introduce his solicitor, who requested an extension to the end of March for submission of the documents. HMRC responded that a written authority would be required to discuss anything with the solicitor, but agreed to extend the deadline to 28 March 2014. HMRC asked for a Certificate of Bank Accounts to be completed and returned and an explanation of a
25 £20,782.69 discrepancy that a 'Takings Build Up' exercise had revealed. The Appellant was warned that a £300 penalty would be imposed on 28 March 2014 if the information already requested in its letter of 12 February 2014 was not supplied.

30 24. A letter was received from the Appellant's agent on 21 March 2014 enclosing further, but incomplete, information. He advised that in respect of the Takings Build Up, not all the Appellant's bankings were business related.

35 25. As the Appellant had not complied with the Schedule 36 Information Notice a Penalty Notice was issued under Paragraphs 39 and 46 of Schedule 36 of the Finance Act 2008 to the Appellant on 1 April 2014. HMRC also asked for evidence of any non-business bank deposits in the Takings Build Up and the records of creditors at the year end.

26. On 23 April 2014, the Appellant, appealed against the penalty notice issued on 1 April 2014.

27. HMRC responded on 1 May 2014 to advise that the grounds for appeal were not acceptable and offered a review.

40 28. A daily penalty notice was issued on 7 May 2014 to the Appellant under Paragraphs 40 and 46 of Schedule 36 of the Finance Act 2008.

29. On 10 May 2014, the Appellant advised HMRC that an application had been made to the Tribunal to close the enquiry.

30. HMRC say that the following is outstanding and reasonably required:

- 5 i. Documentary evidence of the 'LSC FCTL' and 'Proximity VE' investments. HMRC's concern is that if LSC FCTL and Proximity VE are indeed investment returns it is necessary for the Appellant to explain how he has been able to make such investments given his low profits of £46,804.48 (after tax) in total from 2006 to 2011. This also raises the concern that the Appellant's profits may have been higher than declared.
- 10 ii. Documentary evidence of the deposits from Reading College. The payments could be for the supply of sporting goods. A letter from a student saying the payments were for child care is not satisfactory.
- 15 iii. The Appellant has not explained how he was able to lend £6,000, £9,000 and £15,000 from such low profits. Evidence of the source of funds is required and documentation to show that the payments were indeed loans to friends/family or loan repayments to friends/family.
- iv. A written explanation and supporting evidence for the discrepancy in the Takings Build Up.
- v. A Certificate of Bank Accounts operated.

20 The Appellant's contentions

31. Mr Siddique said that the Appellant was short staffed in his shop and was unable to attend. Mr Siddique said that the Appellant had cooperated with HMRC throughout the enquiry. He says that he has replied to all of HMRC's letters and voluntarily attended meetings with the investigating officer.

25 32. Mr Siddique that it is necessary to consider the length of time the enquiry has been ongoing, in this case more than two years, the degree of co-operation by the Appellant and the information that remained outstanding, if any. He said the Appellant had provided accounting records, paying in books, cheque stubs, payroll and other records. He had also provided written authorisations when requested by
30 HMRC in order that they could obtain further information from third parties.

33. Insofar as they may be outstanding information, Mr Siddique said that the information requested was not connected with the Appellant's tax return. LSC FCTL and Proximity VE were investments unrelated to the Appellant's business. Mr Siddiqui argued that the scope of the enquiry is limited to what is contained in a tax
35 return. There has to be an objective justification for not issuing a closure notice. In his submission the enquiry had been based on subjective, flawed and heavy-handed opinion.

34. Mr Siddique says that the burden of proof is on HMRC to show reasonable grounds not to issue a closure notice and they have not discharged the burden.

HMRC's submission

5 35. Mr Bentley for HMRC said that there were reasonable grounds for believing that the taxpayer's income was greater than it initially appeared to be. HMRC were not satisfied that they had a complete or satisfactory picture of the taxpayer's financial circumstances in relation to the years in question. They did not therefore wish to close their enquiries at this stage. Mr Bentley argued that HMRC should be allowed to continue with their enquiries until they were able to form a reasonable judgement
10 about the Appellant's income and the amount of tax due.

Conclusion

36. There is a presumption that an application to the Tribunal to issue a closure notice must be granted unless HMRC show that there are reasonable grounds to refuse it. If the Tribunal believes that the enquiry is being inappropriately protracted or pursued,
15 s 28A TMA says that the Tribunal must issue a closure notice unless satisfied that there are reasonable grounds for not issuing such a notice. In this case the Tribunal believes that that there are reasonable grounds.

37. HMRC have identified the information which is outstanding and has been requested from the Appellant several times. No acceptable argument has been proffered to show why that information has not been forthcoming. The obvious
20 inference must be that the information is connected with the Appellant's business and that the income declared in his tax return may not have been correct. The taxpayer is not entitled to withhold information reasonably required for the purpose of checking his tax return where it may be material to the correctness of that return. HMRC should
25 not be forced into issuing assessments based on less than the full facts.

38. The enquiry has indeed been ongoing for more than two years, but that is only because the Appellant has consistently failed to provide information requested. HMRC have to be able to decide whether the Appellant's tax return is correct and without the information, which in our view has been reasonably requested, their
30 enquiries could not be closed. It would not be appropriate for the Tribunal to order a closure notice without full facts being available to HMRC.

39. For the above reasons we refused the application to issue a closure notice

40. 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
35 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.

5

**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 19 November 2014