



TC05967

Appeal number:TC/2016/07157

INCOME TAX – application to close enquiries – section 28A TMA 1970 – whether reasonable grounds for not issuing a closure notice – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CLAUDIO MICHAEL GRECH

Applicant

- and -

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

**TRIBUNAL: JUDGE JONATHAN CANNAN
 MS ANN CHRISTIAN**

Sitting in public in Manchester on 11 April 2017

Mr Jonathan Darbyshire of Isaacs Accountants for the Appellant

**Mr Paul Marks of HM Revenue & Customs Solicitor's Office and Legal Services
for the Respondents**

DECISION

Background

1. This is an application by Mr Grech pursuant to Section 28A Taxes Management Act 1970 (“TMA 1970”). Mr Grech is the subject of enquiries into his self-assessment tax returns for 2011-12, 2012-13 and 2013-14. Those enquiries were opened on 15 October 2015. Section 28A(4) TMA 1970 provides that a taxpayer may apply to the tribunal for a direction requiring an officer to issue a closure notice within a specified period. Section 28A(6) then provides as follows:

10 “ 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.”

2. It is clear and well established that in the present application there is a burden on HMRC to show that there are reasonable grounds for continuing with the enquiry and not issuing a closure notice. There will be reasonable grounds not to issue a closure notice if the officer cannot reasonably be expected on the information available to make an informed judgment as to the issues, stating his conclusion and making any necessary amendment to the returns. That judgment relates both to liability to tax and the amount of any liability.

3. Where the tribunal is not satisfied that there are reasonable grounds for not issuing a closure notice within a specified period it must give consideration to what that specified period should be. In other words, what is a reasonable period within which the officer should issue a closure notice. The specified period will depend on all the circumstances of the case, including the history of the enquiry, any delays that have taken place and the nature and extent of any outstanding matters.

4. We heard evidence from Mr Christopher Marr, a higher officer of HMRC who is presently responsible for the enquiries. We were also referred to relevant documentary evidence. Based on the evidence before us we can briefly set out the history of the enquiries and the present position in relation to the enquiries.

Progress of the Enquiries

5. The enquiries were focussed on Mr Grech’s rental income, which had not been disclosed to HMRC for certain years, and on the means available to him to support his expenditure. Initially the enquiries were being conducted by Mrs C Harris and at the commencement of the enquiries she had asked Mr Grech to provide documentation and information in relation to his rental income, bank, building society and credit card accounts, and his general income and expenditure. Some of that information was provided by Isaacs, Mr Grech’s accountants on 18 November 2015. No bank and credit card statements could be provided at that time. Isaacs also intended to analyse the statements to assist Mrs Harris in her enquiries.

6. Whilst Mrs Harris was waiting for the bank and credit card statements, she wrote on 1 December 2015 raising some queries based on the information that had been provided.

7. Isaacs provided copies of the bank and credit card statements on 11 March 2016, together with hard copy summaries of each bank account for the periods under enquiry. The bank account summaries were produced electronically by a program called “auto rec” from raw data taken from the statements. There was reference in the accompanying letter to Mr Grech’s employments with Eye 4 Money Ltd and Swift Financial Solutions Ltd (“the Companies”), and to substantial loans from the Companies to Mr Grech to support his “gambling habit”. Substantial sums were credited and debited in relation to the bookmaker, Paddy Power. Isaacs included a summary of the monies loaned and the repayments. Further financial details were also provided.

8. It is clear that a significant amount of information was provided at this stage, and on 11 April 2016 Mrs Harris wrote to say that she hoped to get back to Isaacs with any questions by the end of April.

9. In fact it was 20 May 2016 when Mrs Harris wrote to Isaacs. We do not consider that this amounted to a delay given the amount of information which Mrs Harris had to consider. In her letter Mrs Harris set out a large number of matters arising from the information provided. Those matters related to the loans, entries in and use of the various bank accounts and credits that she considered remained unexplained. She asked for a reply by 22 July 2016.

10. Isaacs replied on 20 July 2016 setting out responses to the matters raised together with details of Mr Grech’s connection with the Companies. They concluded that their analysis demonstrated that Mr Grech was able to finance his lifestyle taking into account his salary, borrowings and gambling winnings. They identified a “one off consultancy fee” of £5,000 which was a taxable receipt and invited Mrs Harris to close the enquiries.

11. In July 2016, Mrs R Morris took over responsibility for the enquiries from Mrs Harris. Her involvement was short-lived, indeed it does not seem that Isaacs were aware of the change until 11 August 2011 when Mrs Morris wrote to say that she was moving to other work and a new caseworker would be taking over the enquiries. Mrs Morris stated that there would be a response to Isaacs’ letter by 19 September 2016.

12. Mr Marr took over responsibility for the enquiries on 15 September 2016 and he telephoned Isaacs to introduce himself. To some extent there is a dispute as to what was said in this telephone conversation which we mention below.

13. On the same date and pursuant to the telephone conversation Isaacs sent 5 emails to Mr Marr with attached files containing the “auto rec listing” for each bank account. This was the raw data input by Isaacs derived from the bank statements. It had not previously been provided in electronic form. Mr Marr’s colleagues carried out considerable work to review that data. Between 15 September 2016 and 2 November 2016 there were a number of emails between Mr Marr and Isaacs in relation to Mr Marr’s work on analysing the data. We understand that in some respects the data was incomplete and in some respects entries were incorrectly recorded.

14. On 9 November 2016 Mr Marr wrote to Isaacs following his review of the material provided. It is clear from that letter that based on the evidence available to Mr Marr his view was that loans from the Companies appeared to be remuneration or dividends. He asked for copies of the director's loan accounts for the Companies and an explanation for the fact that the Companies' balance sheets did not show the loans. He also asked for an explanation of certain credits into the bank accounts and other matters.

15. Isaacs replied on 17 November 2016. It was pointed out that Mr Grech had been a director of Swift only for relatively short periods of time and had not been a director of Eye 4 Money. Surprise was expressed at the view that payments were not loans but remuneration in light of the fact that there had been substantial repayments. As far as the credits were concerned, the letter said that Mr Grech had already explained that these were gambling winnings from betting shop or on course betting.

16. Isaacs asked for a reply within 14 days, in other words by 1 December 2016. In the absence of a reply Isaacs stated that they would apply for a direction to close the enquiry.

17. Mr Marr sent a holding letter dated 2 December 2016 and a substantive response by letter dated 6 December 2016. He set out his understanding of the connection between Mr Grech and Swift. He asked for evidence as to repayment of the "loans". He also noted that there had been a disposal of shares in Swift and asked about the capital gains tax position. In relation to Eye 4 Money he asked about its activities, for copies of written agreements and details in relation to the loans. He also asked for further evidence in relation to the alleged gambling winnings. Finally, he asked for a response by 6 January 2016.

18. In fact Isaacs had already sent the present application to the Tribunal on 1 December 2016. They replied briefly to Mr Marr's letter on 14 December 2016 informing him of the application and providing some further information, but expressing their view that they had "covered this ground already".

19. Since October 2015 when the enquiries were opened the Companies have both gone into liquidation. Eye 4 Money is in creditors' voluntary liquidation and the main creditor is HMRC. Swift entered a members' voluntary liquidation and has since been dissolved.

The Issue

20. The issue between the parties on this application is whether Mr Marr should reasonably be expected make an informed judgment as to the nature and extent of any tax liabilities of Mr Grech on the basis of the information presently available to him. HMRC's case is essentially that:

(1) Mr Marr has concerns as to the payments made by the Companies to Mr Grech, in particular whether they are loans or remuneration. He wishes to obtain further information as to how they have been treated in the accounts of the Companies.

5 (2) Mr Marr is not presently satisfied that credits to the bank accounts are gambling winnings. He wants to see evidence of returns from bets other than with Paddy Power that can be directly attributed to entries in the bank statements. Otherwise he considers that unexplained credits must be rental income received in cash.

(3) Mr Marr is concerned about the mixing of cash from alleged gambling transactions and rental income. He seeks further information to establish what sums are gambling winnings and what sums are rental income.

10 21. Mr Grech's position is essentially that there has already been considerable delay in the enquiries, and that Mr Marr has all the material he reasonably requires to close the enquiries.

Decision

22. The principal delay relied on by Mr Grech is between 20 July 2016 and 15 September 2016, and part of the period thereafter until 1 December 2016.

15 23. We do not consider that the change in personnel by HMRC has contributed to any serious delay in the enquiries. Between 20 July 2016 and 15 September 2016 Mrs Morris and then Mr Marr took over responsibility for the enquiries. Changes to personnel during the course of an enquiry will occasionally be necessary. What is important is that where there is a change the new officer progresses the enquiry expeditiously. It is not clear why Mrs Morris took over responsibility only to be replaced by Mr Marr. That certainly led to some delay but, whilst regrettable we would not describe it as a serious delay. What is clear is that once Mr Marr took over the enquiry on 15 September 2016 he progressed the enquiry. He no doubt had to familiarise himself with the enquiry and he immediately tasked his colleagues with analysing the large amount of digital material that was provided on 15 September 2016.

24. We understand that there has been no progress in the enquiry since 14 December 2016 whilst the present application has been pending. Mr Darbyshire did not make any criticism in that regard.

30 25. Mr Grech's complaint as to the time being taken to issue closure notices in part relates to his contention that by the middle of 2016 there was an "agreement in principle" to resolve the enquiries. There is no evidence before us from which we could be satisfied that there was any such agreement. In any event, where a new officer takes over an enquiry that officer is entitled, indeed obliged to form his or her own judgment, paying due respect to the views and actions of the previous enquiry officer.

35 26. We accept that Mr Marr expressed a view to Isaacs in the telephone conversation on 15 September 2016 that his first impression was that there was only some beneficial loan interest that needed to be calculated. However that was expressed to be an "initial impression" and we do not consider that it should restrict Mr Marr's subsequent enquiries.

27. It was also submitted on behalf of Mr Grech that HMRC have a “pre-conceived assumption of guilt” and that their position in relation to the loans is “not logical”. It seems to us that these are matters which really go to the merits of any amendments which might be made in the closure notices, rather than whether closure notices
5 should now be directed. Indeed, if Mr Marr were to have pre-judged the position then it is not clear why he should be seeking further information. It was not submitted that Mr Marr was simply keeping the enquiries open in the hope that something might turn up.

28. We understand it to be common ground that it is not necessary for HMRC to
10 have all facts and information which might be relevant before they can close an enquiry. There must however be sufficient to make an informed and fair decision.

29. There were a number of issues identified in the evidence before us as to precisely what was said by Mr Darbyshire of Isaacs to Mr Marr in the telephone conversation of 15 September 2016. Mr Darbyshire also criticised Mr Marr’s view of
15 the evidence available to him which he described as flawed. If we were satisfied that on any view there could be no basis to assess Mr Grech in relation to the sums received from the Companies or in relation to unidentified credits then we would direct a closure of the enquiry. We are not satisfied that is the case. In saying that we should not be taken as expressing any view or making any finding as to whether any
20 amendment in relation to those matters would be justified based on the evidence presently available to Mr Marr.

30. When Mr Marr was asked during his evidence why he had not closed the enquiries his response was that he wanted to give Mr Grech a reasonable chance to show that payments from the Companies and unexplained credits were not taxable
25 income. We take into account that if Mr Marr has reached a view based on the evidence before him that Mr Grech is in receipt of undeclared taxable income, it would be for Mr Grech to satisfy HMRC or the tribunal on appeal against amendments in the closure notices that some or all of that income was loans or gambling winnings. HMRC are not prejudiced therefore if they make an informed and
30 fair judgment to amend the self-assessments without all relevant evidence being available to the officer.

31. Mr Darbyshire did tell us during the hearing that Mr Grech keeps a record of all his gambling. That information is clearly relevant to at least one of the issues being
35 considered by Mr Marr and it seems to us that it is likely to be significant evidence. Mr Marr has asked for evidence of Mr Grech’s gambling transactions. He first asked for an explanation of certain unidentified credits in his letter dated 9 November 2016. Isaacs responded that they were gambling winnings from betting shop or on course betting. Mr Marr then asked for evidence of those gambling winnings in his letter dated 6 December 2016. That request has been overtaken by the present application
40 but it seems to us a reasonable request.

32. If there is evidence in the form of a record of gambling maintained by Mr Grech then in our view it would be wrong to direct the enquiries to be closed without that evidence being made available to Mr Marr.

33. In relation to the loans, Mr Marr wants details of the loans and how they were treated in the records of the Companies. Mr Grech has given his explanation during the course of the enquiries. Mr Marr did not appear to appreciate until prompting from the tribunal that he could seek information from the liquidators in relation to the Companies' records. Whether the information is still available is another matter, but it seems to us that Mr Marr is reasonably entitled to make appropriate enquiries.

34. We accept that there is inevitable uncertainty and anxiety for those taxpayers who are subject to enquiries into their tax returns. Any delay to the enquiry prolongs that uncertainty and anxiety. There is a public interest not just in taxpayers paying the right amount of tax, but also in enquiries being conducted efficiently and expeditiously. In an application to close an enquiry the tribunal must consider at what stage it is reasonable to expect the officer to close an enquiry. Taking into account all the circumstances described above we are satisfied that there are reasonable grounds for Mr Marr not to issue a closure notice at the present time. It is reasonable for him to have access to and time to consider any records maintained by Mr Grech relating to his gambling activities, and to seek information from the Companies. We trust that those further enquiries will be carried out efficiently and expeditiously and that a further application to close the enquiries will not be necessary.

Conclusion

35. For the reasons given above we refuse the application.

36. 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.

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**JONATHAN CANNAN
TRIBUNAL JUDGE**

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RELEASE DATE: 23 JUNE 2017