



TC02982

Appeal number: TC/2012/08295

*CLOSURE NOTICE – investigation lasting over 3 years – whether
reasonable grounds for not directing a closure notice – yes*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR KENNETH WILLIAM BLOOMFIELD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE J. BLEWITT

Sitting in public at Bradford on 3 October 2013

Dr Milton of Milton & Co for the Appellant

Mr Healey, Officer of HM Revenue and Customs, for the Respondents

DECISION

Background

5 1. On 25 January 2010 HMRC opened an enquiry into the Appellant's 2008
Income Tax Return. The enquiries made by the officer initially responsible for
opening the enquiry, Mr Herbert, related to properties owned by the Appellant. The
Appellant provided various pieces of information sought by the officer however by
letter dated 2 November 2010 the Appellant was informed that Mr Herbert believed
10 further properties had been owned by the Appellant as at 6 April 2007 or purchased in
the 2007/08 tax year for which no information had been provided. Mr Herbert stated
in his letter to the Appellant dated 2 November 2010 "*I did not wish to disclose the
details of the properties we believe missing as we wished to give your client every
opportunity to disclose, and therefore take advantage of any mitigation...*" however
15 "*in recognition of your client's cooperation in supplying documents and
information...I am now prepared to disclose the details of the additional
properties...*". It transpired, and HMRC accepted at the hearing, that two of the
properties were not owned by the Appellant and the third was the Appellant's home
address as set out on his return. Subsequently HMRC Officer Mr Martin, who
20 attended the hearing, took over the case and continued the enquiry.

Submissions on behalf of the Appellant

2. I should make clear that the Appellant was unable to attend the hearing due to
poor health and consequently the case for the Appellant was made on the basis of
submissions by his representative Dr Milton.
- 25 3. I had been provided in advance of the hearing with Dr Milton's written
application for a Closure Notice. The application will not be set out verbatim in this
decision but can be summarised as follows:
- (a) The enquiry has been unreasonably protracted, onerous and
conducted unreasonably;
 - 30 (b) The Appellant is a 70 year old male who is undergoing medical
investigations for memory loss and confusion;
 - (c) An enquiry prior to that which is the subject of this appeal was
particularly traumatic for Mr Bloomfield and his wife who were regularly
followed by HMRC. On one occasion Mrs Bloomfield was forced to
35 allow officers entry into their home under threat of prosecution of the
Appellant and the officers examined the underwear owned by Mrs
Bloomfield;
 - (d) The Appellant provided all of the information sought by Mr
Herbert. Only when the Appellant's accountants advised Mr Herbert that
40 they would approach the Tribunal did he provide details of the 3
properties purported to be owned by the Appellant;

(e) Following a complaint being made on behalf of the Appellant that there had been unreasonable delay and a refusal by Mr Herbert to answer correspondence, conduct of the enquiry was passed to Mr Martin of HMRC;

5 (f) Mr Martin made voluminous requests for documents and information, parts of which were based on information already provided to Mr Herbert which had not been considered significant;

10 (g) HMRC has been provided with letters written by the Appellant to third parties seeking the information sought by Mr Martin and which is beyond the control of the Appellant;

(h) The Appellant has highlighted to HMRC where formal powers can be used to obtain information which is not in the possession of Mr Bloomfield;

15 (i) Statutory notices were used for information provided which, when provided for a second time was said not to have been received;

(j) The demands of HMRC have become unreasonably excessive and Mr Martin has regularly widened the scope of the enquiry.

20 4. Dr Milton also provided a number of documents showing correspondence between the parties. He highlighted the complaints which had been made in respect of a formal information notice and penalty imposed for non-compliance. The penalty was subsequently withdrawn and it was contended by Dr Milton that the notice had been complied with fully.

25 5. Dr Milton expanded on the written application for a closure notice in oral submissions during the hearing. He contended that an overpayment claim made to HMRC in March 2013 has no impact on the Appellant's application for a closure notice. HMRC's concerns and queries regarding deposits into the Appellant's bank account and discrepancies regarding dividends had been answered.

30 6. He explained that the Appellant had offered mandates to Mr Martin as long ago as 2010 yet he had failed to act on the Appellant's offer. HMRC have continually extended the scope of its enquiry without good reason and the delay in completing the enquiry has been unreasonable.

HMRC's submissions

35 7. I should note that HMRC failed to provide the grounds upon which it contested the Appellant's application prior to the hearing as requested by the Tribunal. In the interests of justice and on the basis that Dr Milton was content to deal with documents which had hitherto not been served rather than seek a postponement, I allowed HMRC to rely on the information.

40 8. Mr Healey summarised the queries which remained outstanding as at the date of the hearing. The first related to dividends and wages received; the Appellant's

bookkeeper had provided HMRC with a schedule in November 2011 which showed the net dividends paid in the year to 5 April 2008 to the Appellant and his wife were £64,900 and the wages paid to the Appellant were £21,603. These figures differed from those contained on the Appellant's tax return which declared the net dividends as £45,320 and the Appellant's wages as £28,620.

9. Mr Healey exhibited a letter from Lister & Co, the Appellant's former representatives, which explained that the Appellant's dividends in the year to 5 April 2008 were £70,320 but this amount was reduced to £45,320 following a conversation with the appellant. The £25,000 was subsequently debited to the Appellant's loan account. The dividend voucher signed by the Appellant on 4 April 2008 and the entries on the 2008 tax return corroborate the explanation. However a letter from Dr Milton dated 26 March 2013 contradicted the information from Lister & Co and the Appellant's bookkeeper as it stated that the Appellant's dividends were £67,041 (£74,490 less tax credit of £7,449) and his wages were £5,225.

10. Mr Healey explained that the Appellant has failed to provide documentation to support the source of deposits for three properties purchased which were said to have been provided by a Mr Arundell. HMRC have made contact with Mr Arundell who advised in an email dated 29 August 2013 that he cannot recall loaning amounts of £8,000 or £2,250 and a review of his accounts shows no such transactions. He has also advised that he was not the source of the third deposit in the sum of £5,995. Mr Arundell stated to HMRC that the source of the loans may have been a company called Woodthorpe Meadows Ltd; he no longer has access to the company details but provided details of Mr Mountain who took over the company.

11. Mr Healey highlighted deposits into two Lloyd's accounts belonging to the Appellant for which no documentation has been provided to show the source of the amounts.

12. In essence, Mr Martin explained that the outstanding matters may be resolved if the enquiry remains open. He intends to write to Woodthorpe Meadows Ltd regarding the source of loans to the Appellant and he is hopeful that the Appellant's loan account will be submitted by his former representatives in the near future.

Decision

13. The issue to determine is whether HMRC have satisfied the Tribunal that there are reasonable grounds for not issuing a closure notice within a specified period. The evidence before me, both oral and documentary, was brief. I took the view that much of the background did not direct itself to the test to be applied by me, namely whether, on an objective view it is appropriate for a closure notice to be issued.

14. I should note that I make no findings regarding the allegations made by the Appellant of improper conduct by HMRC officers on the basis that there was no direct evidence before me either from the Appellant or the HMRC officers allegedly involved. Furthermore, the allegations in my view have no bearing on the issue in this case.

15. In reaching my decision I have balanced a number of factors, including the fact that this enquiry has been ongoing for a significant period of time, the cooperation of the Appellant and the queries which remain outstanding.

5 16. Both parties made submissions regarding HMRC's use of an Information Notice and the imposition of a penalty for failure to comply with the Notice (which was subsequently withdrawn). I found the contradictory submissions provided little assistance in determining the issue in this case, however I was able to clarify from the correspondence before me that the Appellant's appeal against the Information Notice was upheld to the extent that the wording of parts of the Notice was clarified and
10 other aspects of the Notice were deemed either to have been complied with or unnecessary to the Enquiry. The penalty was withdrawn as it had been imposed at a time when the Notice was under appeal.

15 17. From the evidence of Mr Martin it was clear that there are limited items of information outstanding. The information regarding the Appellant's loan account is expected from his previous representatives in the near future. Mr Martin has also been provided with contact details for Woodthorpe Meadows Ltd which may be able to assist in respect of the source of loans received by the Appellant. I formed the view that HMRC is justified in seeking this information, which may in fact assist the Appellant, but that there should be a deadline given the length of the enquiry thus far.
20 Thereafter it appeared from the evidence of HMRC that its lines of enquiry would be exhausted and there was no reason put forward as to why HMRC could not reach a conclusion. Whilst I make no criticism of HMRC seeking to avoid litigation in the future, I concluded that this could not constitute an acceptable reason to allow the enquiry to continue endlessly.

25 18. For the reasons set out above I direct that HMRC should issue a closure notice in respect of its enquiry within 30 days of the date of this decision which allows time for the remaining enquiries to be completed without undue delay.

30 19. 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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40 **J. BLEWITT**
TRIBUNAL JUDGE

RELEASE DATE: 4 October 2013