



**TC05474**

**Appeal number: TC/2015/05787**

*INCOME TAX – Self Assessment return – enquiry into 2011-12 – protective assessments for related years – application for ‘closure’ notices – Taxes Management Act 1970 section 28A – quality of information provided – taxpayer’s co-operation and extent of disclosure – the widening of the scope of enquiry – whether delay in HMRC’s response reasonable – whether reasonable grounds for not issuing a closure notice; yes – whether period for the issue of notice can be specified; no – application refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ALAN FEATHERSTONE**

**Applicant**

**- and -**

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

**TRIBUNAL: JUDGE HEIDI POON  
LIZ POLLARD**

**Sitting in public at the Tribunal Centre, 11 Albion Street, Leeds on 9 March  
2016**

**Mr Srinivas Ram, of Excel Accountants, for the Appellant**

**Mr Alan Hall, presenting officer of HM Revenue and Customs, for the  
Respondents**

## DECISION

### Introduction

1. This is an application by the taxpayer, Mr Alan Featherstone, under s 28A(4) of the Taxes Management Act 1970 for a direction that a closure notice be given under s 28A(1) in respect of the enquiry into his Self Assessment return ('SA return') for the year ended 5 April 2012.

2. The application for a closure notice also covers the years prior to and following the year of enquiry, namely the three years ended 5 April 2009, 2010, and 2011, and the two years ended 5 April 2013 and 2014.

3. The application therefore covers six tax years in total. Notwithstanding the inclusion of the tax year to 5 April 2014, most of the correspondence between the parties and the information requests issued so far relate to the five years to 5 April 2013.

4. A closure notice issued by the relevant officer of the respondents ('HMRC') pursuant to s 28A has two essential aspects: (a) it informs the taxpayer that he or she has completed the enquiries, and (b) it states the conclusions of those enquiries.

5. The burden of proof in this application is effectively on the respondents, to show that it is reasonable for them to continue the enquiry without restriction.

6. Mr Hall, Inspector of Taxes, appeared on behalf of the respondents and led the evidence of Ms Jane Bagshaw, also an Inspector of Taxes, who has been the chief officer dealing with the enquiry into Mr Featherstone's tax position since April 2015. Mr Featherstone's evidence was led by Mr Ram, his tax agent and representative in this application. The parties produced a joint bundle of documents.

### Relevant legislation

7. The legislation relevant to this application comes under sections 28A and 48 of the Taxes Management Act 1970 ('TMA').

#### **'28A Completion of enquiry into personal or trustee return**

(1) An enquiry under section 9A(1) ... of this Act is completed when an officer of the Board by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions.

In this section "the taxpayer" means the person to whom notice of enquiry was given.

(2) A closure notice must either –

(a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return required to give effect to his conclusions.

(3) A closure notice takes effect when it is issued.

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

5 (5) Any such application is to be subject to the relevant provisions of Part 5 of this Act (see, in particular, section 48(2)(b)).

(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.

10 **48 Application to appeals and other proceedings**

(1) ...

(2) In the case of –

15 (a) an appeal other than an appeal against an assessment, the following provisions of this Part of this Act shall, in their application to the appeal, have effect subject of any necessary modifications, ... ;

(b) any proceedings other than an appeal which, under the Taxes Acts, are to be subject to the relevant provision of this Part of this Act, the relevant provisions –

20 (i) shall apply to the proceedings as they apply to appeals;

(ii) but shall, in that application, have effect subject to any necessary modifications, including ... the omission of section 56 below.’ (Section 56 pertains to the payment of tax where there is a further appeal.)

25 **The Facts**

*Enquiry under s 9A TMA*

8. On 22 January 2014 HMRC issued a notice of enquiry under s 9A of TMA to the taxpayer and his agent in relation to the taxpayer’s SA return for the year ended 5 April 2012, which was a nil return with no income declared as received.

30 9. The enquiry notice requested the provision of documents in relation to earnings received from employment and self-employment, pensions and rental income and any other sources of income, to be received by HMRC by 21 February 2014.

10. The enquiry notice also highlighted the fact that the taxpayer’s SA return for 2009-10 showed receipt of income from a public house. There was no note of this  
35 source of income having ceased in 2011-12, or in the intervening year of 2010-11.

11. The submitted SA returns in relation to other years related to the enquiry have declared total income before tax as follows:

(1) 2008-09 profit from self-employment (The Brighton Hotel) was £280;

- (2) 2009-10 profit from self-employment (Public House) was £938;
- (3) 2010-11 total income received was nil;
- (4) 2011-12 total income received was nil;
- 5 (5) 2012-13 pay from employment (A & D Yorkshire Ltd) was £4,450 and rental profit from *one* property (The George Hotel) was £12,283.

*The first Sch 36 notice*

10 12. The taxpayer did not comply with the request for information by 21 February 2014. On 4 March 2014 HMRC issued a notice under Schedule 36 of the Finance Act 2008 ('Sch 36 notice') in respect of the information and documents requested under the enquiry notice, to be provided by 3 April 2014. The Sch 36 notice was not complied with either and an initial penalty of £300 was charged on 9 April 2014.

15 13. On 12 April 2014, Mr Ram, on behalf of the taxpayer, disclosed rental income of £1,200 received from 38 Foldings Grove for 2011-12, which had not formerly been declared on the SA return. The disclosure by email also listed related expenses and stated the net profit at £129. None of the figures were supported by documents. (These figures were contradicted in November 2014, when the income was stated at £3,665 and net profit at £1,415.)

*Taxpayer's meeting with HMRC in July 2014*

20 14. On 2 July 2014 a meeting was held at HMRC office and attended by HMRC officers, Mrs Knight and Mr Baker and the taxpayer with his agent. Further disclosures during the meeting and HMRC's response to them are as follows:

25 (1) Purchase of The George Hotel – on 9 December 2011 for £229,575 (purchase price at £225,380 plus fees, charges and stamp duty totalling £4,195); jointly owned by the taxpayer and his wife; allegedly funded by closure of his wife's café business, and the taxpayer's savings and interest free loans from friends. HMRC are not satisfied that information from returns submitted prior to the purchase (see below) shows that the level of income could have generated the required savings for the purchase.

30 (2) Rental from The George Hotel – the pub business of The George Hotel trades through a company by the name of A & D Yorkshire Ltd, of which the taxpayer is a director. The company rents the premises from its owners. HMRC queried why no rental income was included in 2011-12.

35 (3) 2 James Street – purchased on 15 April 1999 with a mortgage from the council and was the taxpayer's home until 2009; that the taxpayer's son has lived there for the past 3 to 4 years free of rent. (This was contradicted by a later statement in November 2014 that a council tenant has resided here since June 2009; annual rental of £6,240 were declared for 2011-12.)

15. After the disclosure of the property at James Street, the taxpayer was asked if he owned any other properties; he replied in the negative. HMRC advised that the Land

Registry records suggest further properties are owned by him apart from 2 James Street and 38 Foldings Grove.

16. The meeting adjourned and HMRC officers left the room to allow the taxpayer time to discuss the matter with his agent. The taxpayer then gave details of three more properties that are under his name: (1) 30 Darley Street, (2) 4 James Street, (3) 12 Firthcliffe Parade.

17. In respect of these three properties, the taxpayer gave the following details:

(1) 30 Darley Street – this is the house of the taxpayer’s ex-partner and she continues to reside there rent-free. (Mr Ram’s October 2014 letter states that Mr P Wilkinson stayed there from 6 April 2008 to February 2010 rent free; a paying tenant from March 2010.)

(2) 4 James Street – Mr and Mrs Housecroft live at this property and were neighbours to the taxpayer when he resided at 2 James Street; that the Housecrofts were declared bankrupt and the taxpayer bought the property to stop them losing their home and it was purchased on the proviso that the Housecrofts would repay the taxpayer in due course; that no money had been received since the purchase. (Mr Ram’s October letter states that £49,000 has been received from the Housecrofts so far.)

(3) 12 Firthcliffe Parade – that it was purchased over 10 years ago for the taxpayer’s son; no rent payments are received. (Mr Ram’s October letter states that paying tenants have been residing since April 2008, and annual rentals are stated at £3,380 for each of the five years to 5 April 2013.)

18. After the disclosure of the three further properties, the taxpayer was asked again if there were any other properties in his name and again he replied in the negative. HMRC advised that the Land Registry records list 2 Peaseland Avenue under his name. Mr Featherstone advised that the property was bought with his wife at an auction for his daughter two or three months ago, and that he gifted the deposit.

19. Officer Baker asked about the discussion on a hairdresser’s salon which he had overheard. The taxpayer explained that the discussion referred to a lock-up shed at 5 Vernon Road, purchased with his ex-partner who runs a hairdresser’s business from the property; that he received no rent on the condition that his ex-partner brought up their daughter. (Mr Ram’s October letter states that Ms Priestley pays £60 per week.)

*Officer Knight’s letter of 14 July 2014*

20. On 14 July 2014, two copies of the notes of meeting were sent to Mr Ram, one to be returned signed by the taxpayer. A four-page letter accompanied the meeting notes. The letter contained lists of information and documents requested for the purpose of addressing the two central issues identified by HMRC after the meeting, namely: (a) the source of finance to support the purchase of The George Hotel; and (b) the full amount of rental income from the portfolio of properties.

21. The letter also included a list of questions pertaining to the taxpayer's private and personal expenditure for reply. A bank and building society declaration form was enclosed for completion by the taxpayer.

5 22. Apart from information requests, the 14 July letter also advised that  
‘information is held to suggest that Mr Featherstone was in receipt of another source  
of taxable income not returned for the year of enquiry. This income was also received  
in 2010-11 and therefore HMRC has a discovery position under s 29 TMA 1970 and  
can review all in date years.’ It would seem that protective assessments were raised at  
10 some point afterwards for the relevant years in relation to the discovery position  
arising from 2010-11.

23. A response to all the questions and information requests listed in the letter was to be provided by 26 August 2014. This did not happen.

*The second Sch 36 notice and the three stages of response*

15 24. On 28 August 2014, Officer Knight issued a Sch 36 notice for information and  
documents which had been requested in her letter dated 14 July 2014, to be provided  
by 26 September 2014. Attempts to comply with the request came in three stages.

25. The first stage delivered on 26 September 2014 some bank statements together with the declaration of account holdings, which was completed in what would seem to be the taxpayer's hand-writing, and signed and dated 24 September 2014.

20 26. The second stage of response came in the form of a letter by Mr Ram on 9  
October 2014, which provided the details of the people staying in each property and  
what they may have paid to occupy the properties from 6 April 2008. As to the  
questions relating to the taxpayer's private and personal expenditure, most were given  
with a ‘No’ or ‘Very little’ as an answer; for example, ‘Holidays in the year to 5 April  
25 2012 – NO’; ‘Spend on clothing – Very little’.

27. Mr Ram's October letter contained information regarding each property that simply contradicted what the taxpayer had said in respect of each during the July 2014 meeting. Some (but not all) of these contradictions are related earlier against each. The ‘contradictory’ details were introduced by Mr Ram with the following remark:

30 ‘At the time of the meeting with you, Mr Featherstone could not  
recollect exactly details of income of each property and the tenants and  
got it all mixed up. Please refer to actual details given below.’

35 28. The third stage of response was delivered on 3 November 2014. The completion  
statements of purchase (where applicable) for each property were provided, together  
with spreadsheets stating the income and expenses for each of the five rental  
properties for the five-year period from 6 April 2008 to 5 April 2013. Curiously, the  
figures for expenses for each property are almost all identical and repeatedly consist  
of the same three items year on year: (a) Gas/electric check for £200; (b) House  
insurance for £400; and (c) Accountancy fees for £100. Additional expenditure such  
40 as installation costs of £3,500 for central heating at 12 Firthcliffe Parade were claimed  
100% as First Year Allowance in 2008-09. With the exception of 2 James Street and

Folding Groves, the annual rentals for the other properties are more or less identical for each of the five years with no variations or fluctuations year on year.

29. The concluding paragraph to the covering letter of 3 November 2014 states:

5                   ‘We believe that we have provided all the necessary information for  
you to deal with the investigation and come to a conclusion.’

30. HMRC took time to review the information. The Tribunal was referred to letters written by Officer Knight dated 23 December 2014, 26 January 2015, 26 February 2015, and by Officer Harris, Manager of the ‘Interventions Team’, dated 31 March 2015. These letters informed Mr Ram that the information received in  
10                   September, October and November of 2014 was still under review. The case was taken over by Officer Bagshaw in April 2015.

*Officer Bagshaw’s May 2015 letter and the third Sch 36 notice*

31. On 20 May 2015 Officer Bagshaw wrote to Mr Ram setting out her response in a three-page letter, advising that she was still in the process of reviewing the  
15                   information and documents received so far. To assist with her review, the letter requested further information and documents, which came broadly under two categories: (a) supporting documents for calculating the income and expenditure for each of the properties, and (b) bank statements for all accounts into which rental income was paid in the year 2011-12. No response to the request was made within  
20                   the time limit of 18 June 2015.

32. On 20 May 2015 Officer Bagshaw also separately wrote to Mr Featherstone, enclosing a copy of the fact sheets CC/FS7a and CC/FS9 to provide information regarding penalties and the Human Rights Act.

33. As no response was received in relation to the information and documents  
25                   requested in the letter of 20 May 2015, Officer Bagashaw issued an information notice on 6 July 2015. The information and documents listed on this (third) Sch 36 notice fall into two sections:

30                   (1) in relation to 4 James Street, the legal contract between Mr Featherstone and Mr and Mrs Housecroft showing the terms of loan repayment by the Housecrofts; the actual amount of loan; the details of amount repaid to be supported by bank account statements; and

35                   (2) in relation to the other five rental properties, the tenancy agreement, the record of rentals received, the receipts and invoices for expenditure incurred, and the mortgage interest statement where applicable for each of the properties for the year ended 5 April 2012.

*HMRC’s summary of issues by letter dated 6 July 2015*

34. Also on 6 July 2015, Officer Bagshaw wrote a four-page long letter setting out the ‘present position’ in respect of the check of the information and documents received so far. This letter also explained why further information and documents are

required to progress with the enquiry. The information and documents were to be provided by 5 August 2015, and are related under three main headings in the following paragraphs.

*(a) The facts and issues relating to individual rental properties*

5 35. The information and documents received so far were corroborated against information from other sources, and Officer Bagshaw set out the salient facts and the issues raised for five of the properties. Apart from the specific issues relating to the individual properties as highlighted below, Officer Bagshaw's overriding question is why the various amounts of rental income, as stated in Mr Ram's October letter and  
10 spreadsheets, have never been included in the SA return for 2011-12, or other years.

36. The facts and issues for each property can be summarised as follows:

(1) 5 Vernon Road – purchased on 24 April 1990 and rented to Ms V Priestley for £60 per week; payment direct into the Halifax account.

15 (2) 2 James Street – purchased on 2 September 1993 and has been rented to a council tenant Ms L Greaves since June 2009; payment of £120 per week in cash deposited direct into bank.

Issues: an explanation of the term 'council tenant' and documentation to support, and the bank account statements showing the deposit of rent.

20 (3) 30 Darley Street – purchased on 9 December 1994, that Mr P Wilkinson had resided there from 6 April 2008 to February 2010 and paid no rent as he was a friend of Mr Featherstone.

25 Issues: information held by HMRC suggests that Mr Wilkinson resided at the address prior to April 2008; when did Mr Wilkinson first live there; who lived there before him; did these people live there as a tenant of Mr Featherstone; whether rental payments made by them; whether Mr Wilkinson rendered a service in Mr Featherstone's property business in lieu of rent.

30 (4) 12 Firthcliffe Parade – purchased on 15 April 1999; Mr and Mrs Hardistry have lived there since 6 April 2008 paying rent of £65 per week. Information held by HMRC suggests that tenancy began prior to this date.

(5) 38 Folding Grove – purchased on 15 April 2008, Ms R Worley and Mr G Grice have been renting the property from July 2009 to October 2012 for £433 per month.

*(b) Issues relating to property purchase*

35 37. In relation to 4 James Street, the property was purchased on 8 July 2005 for £100,000 from Mr Featherstone's then neighbours, Mr and Mrs Housecroft. The transaction was treated as a loan with repayment to Mr Featherstone at £516 a month plus £25 insurance into his Halifax account. Monthly payments totalling £49,000, according to Mr Ram's letter, have been made towards repayment of the loan.



38. The Halifax account statement provided to HMRC shows a receipt dated 28 December 2011 from Mr and Mrs Housecroft for £541.34 under the reference 'Rent'. Officer Bagshaw questioned in her letter why the monthly payment was designated as 'rent' by the payees.

5 39. No completion statement for 4 James Street has been produced. Instead, HMRC were provided with a letter from the firm of solicitors acting for the taxpayer and dated 18 April 2005 advising that the firm could not act for both Mr Featherstone and Mr Housecroft in drawing up 'a contract for sale' (the term used by the solicitor) of 4 James Street.

10 40. In the light of the solicitor's letter, Officer Bagshaw stated that she would 'need to establish whether this arrangement was a commercial transaction from which Mr Featherstone gained financially'.

15 41. In relation to the purchase of The George Hotel on 9 December 2011 by Mr and Mrs Featherstone for £225,380 plus outlays of £4,195, Officer Bagshaw explained that as the purchase took place in the year of enquiry, 'it is necessary to establish where the funds came from for the purchase', notwithstanding Mr Featherstone's assertion that no trading income was generated from the property during 2011-12.

*(c) Account transactions that require further explanation*

20 42. Officer Bagshaw compared the solicitor's ledger entries for the purchase of The George Hotel with the bank statements provided so far and listed 16 transactions that require explanation. These transactions come from five different account holdings: Halifax, RBS, Lloyds, Yorkshire Building Society, and Santander.

25 43. Substantial balances were building up on these accounts, such as £30,000 into the Halifax account on 22 November 2011; £79,848 as at 24 November 2011 in the account with Yorkshire Building Society; two sums of £6,000 and one sum of £2,000 on 29 November 2011, making a total of £14,000 on the same day into Santander.

44. The solicitor's ledger provided with the completion statement recorded entries of the funds accruing on the matter in relation to the purchase of The George Hotel, which are summarised as follows:

30 (1) On 24 November 2011, two separate cheques from Mr Featherstone in the sums of £40,152 and £50,000, and a cheque from Yorkshire Building Society for £79,848.41 are recorded on the ledger.

(2) On 30 November 2011, another cheque for £16,000 from Mr Featherstone.

35 (3) On 1 December 2011, a cheque from D Maitas (claimed to be Mr Featherstone's nephew) for £25,000;

(4) On 2 December 2011, a cheque from Mr Featherstone for £16,604.

45. Ms Bagshaw referred to her letter of 20 May 2015, which asked for the original bank statements for all the accounts Mr Featherstone had an interest in for the period

6 April 2011 to 5 April 2012 to be provided, and stated in her July letter that these have not been received.

46. Reiterating the need to review the original bank statements for all of Mr Featherstone's account holdings, Officer Bagshaw enclosed a revised Bank Declaration form for completion, for additional information to be provided against each of the accounts listed in the form previously completed in September 2014. The additional details required are the account number and branch address or sort-code for each of the accounts.

47. As some bank statements for part of the year of enquiry have already been provided, Officer Bagshaw enclosed a schedule listing the 'missing periods' of bank statements required for Halifax, Santander, RBS and Lloyds that need to be supplied to enable her to have the complete records for the full year.

#### *Penalties and the fourth Sch 36 notice*

48. The Sch 36 notice issued on 6 July 2015 has not been complied with and an initial penalty and daily penalties have been imposed.

49. On 21 August 2015, another Sch 36 notice was issued to request information and documents that Ms Bagshaw has detailed in her letter of 6 July 2015. This has not been complied with either, and an initial penalty has been charged.

#### *Application for closure of enquiry*

50. On 12 August 2015, Mr Ram advised Officer Bagshaw by email that an application has been made to the Tribunal for the s 9A enquiry to be closed. He gave the following as reasons for the application:

'We wish to bring to your notice that since our documents to Mrs Knight in October 2014 we sent the calculations related to prior years 2 weeks after that. We waited for a few months and filed an application to Tribunal to consider this due to excessive delay in spite of the fact that we have given all the necessary information.

We are waiting for the Tribunal to confirm. Could you please check on that and confirm to us?'

51. Mr Ram indicated on 12 August 2015 that an application had been filed in April or May 2015. Officer Bagshaw checked with the Tribunals service following his email. The Tribunals service confirmed that no application had been received, and on 21 August 2015, Officer Bagshaw advised Mr Ram of the same.

52. On 25 August 2015, Ms Bagshaw wrote to give an overview of the position of the s 9A enquiry. The letter also states the following:

'With regard to the reference to HMRC's delay, I accept that the information we received in October 2014 could have been dealt with in a more timely manner however, Mrs Harris and Mrs Knight both wrote to you on a monthly basis to update you on the current position. During

the period October 2014 to April 2014 [*sic* 2015] I cannot find any correspondence or record of contact from you or your client that indicates your dissatisfaction with how the compliance check was being conducted.’

5     **The grounds for the application**

53. The application was dated 17 September 2015, and under the section for relevant information, the following is stated:

10                     ‘We attended the meeting with HMRC in Leeds and provided all information requested based on HMRC letter in October and November 2014 itself. We did not get any update based on the information provided but few letters in Dec/Jan and Feb 2015 saying its [*sic*] being looked into. We sent this application in April 2015 itself by post but came through officer that you have not received it. Hence we believe that we provided all information by Nov 2014 itself and charging £300 penalty and asking for further information is unreasonable as HMRC has taken more than 7 months and still not provided any feedback.’ (The entry on the form is entirely in block capital, which is not replicated here.)

20     54. At the hearing, Mr Ram elaborated on the grounds as stated in the application, supported by the taxpayer’s evidence. The onus is on HMRC to resist the application; it is no necessary to rehearse the grounds of the application in detail here except to emphasise that the taxpayer’s representations can be summarised by the repeated assertion that he has given *everything* required to HMRC by November 2014.

**HMRC’s position**

25     55. Officer Bagshaw stated in her witness statement that for the year ended 5 April 2012, the only information provided in relation to the calculation of the profit arising from the rental income are the figures on the spreadsheets provided in November 2014. Since none of these figures are supported by documents and records, HMRC cannot accept these figures without verification.

30     56. The information and documents provided in response to the second Sch 36 notice of 28 August 2014 have raised concerns as to the origin of the taxpayer’s accumulated capital, which Officer Bagshaw related in evidence as follows:

35                     (1) As at September 2011, Mr Featherstone had bank account balances known to HMRC totalling £28,601 and a further £12,000 in other bank accounts. There were no income sources on the SA returns for 2011-12 or in the prior years to indicate how the funds could have accumulated.

                      (2) The funds totalling £75,000, which was formerly explained as loans from friends, were inclusive of cash deposits of £30,000 and £20,000 and £4,000. The source of all these deposits requires verification.

40     57. HMRC have issued the information notices and penalties under Sch 36 FA 2008 to obtain the necessary information to establish the taxable profit from the rentals.

The taxpayer, however, has failed to comply with these notices and HMRC are considering the need to obtain information from third parties under Sch 36.

58. Officer Bagshaw also highlighted the fact that the named properties were purchased over a period exceeding 20 years, and this may indicate that Mr Featherstone's tax returns have been inaccurate for this length of time.

59. In conclusion, Officer Bagshaw addressed the Tribunal that 'it is necessary for the enquiry to remain open until HMRC are satisfied – through inspection of supporting records and information – that disclosures have been made in full and the extent of inaccuracies in earlier tax returns and duty payments is known'.

## 10 **Decision**

60. Under the terms of s 28A(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.' The onus is therefore on HMRC to show that it is reasonable for the enquiry to continue without restriction.

### 15 *The quality of information and documents provided so far*

61. The enquiry opened in January 2014 and the first Sch 36 notice of March 2014 was not complied with, resulting in an initial penalty. The first disclosure of information came in April 2014 by email to note rental income from Foldings Grove; the figures contained in that initial disclosure were subsequently contradicted by figures provided in November 2014.

62. The July 2014 meeting resulted in the second Sch 36 notice of August 2014. The attempt to meet the information request was made in three stages. The information and documents provided raised as many questions as they answered. These questions necessitated requests for further information and documents, which were made by Officer Bagshaw in four stages:

- (1) Letter dated 20 May 2015 for information by 18 June 2015;
- (2) Sch 36 notice dated 6 July 2015 for information requested in May;
- (3) Letter dated 6 July 2015 for further information by 5 August 2015;
- (4) Sch 36 notice dated 21 August 2015 for request made in the July letter.

63. None of these information requests by Officer Bagshaw have been complied with to date. The taxpayer's position, as stated in the application and emphasised at the hearing, is that all the information required had been given by November 2014.

64. We have considered the position from both sides. There can be no basis for the taxpayer's claim that all information requested has been supplied by November 2014. On the contrary, the information and documents supplied in the autumn of 2014 have given rise to many issues that can only be addressed with further provision of information and documents. Here is a property business having been developed over

20 years, and yet virtually no business records have been kept, or at least produced. The paucity of information and the absence of primary records mean that the figures declared as income and expenditure in relation to the rental properties can neither be vouched for, nor verified, as regards their authenticity, accuracy, and completeness.

5 65. Those figures purported to represent the full extent of income received and related expenditure in the five years have neither substance nor credibility; the same annual rentals are stated for most of the properties for the five years without variations or fluctuations; the same three items of expenditure appear for almost every property in every single year in a formulaic manner.

10 66. While the taxpayer may consider that the efforts made in the autumn of 2014 through Mr Ram's representations were able to close the enquiry, the Tribunal, having regard to what has actually been provided, is of the view that the information and documents received have raised more questions than they have answered. Furthermore, since all the figures provided are unsubstantiated, there is simply no  
15 substantive or credible basis for any amendments to be made to the SA return for 2011-12. Without being able to establish the position for 2011-12, which will form the basis for the back duty assessments, HMRC are in no position to issue a closure notice for any of the six years to which this application relates.

#### *Taxpayer's co-operation and disclosure*

20 67. The Tribunal is stating the obvious that the entire course of the taxpayer's dealing with HMRC had been characterised by a general lack of candour, if not duplicity. The SA returns declaring nil to negligible income for at least four of the five years concerned suggest not only glaring inaccuracies, but possibly deliberate and concealed behaviour that had caused these inaccuracies.

25 68. The enquiry did not elicit any full-scale co-operation or disclosure from the taxpayer that could have enabled the enquiry to conclude. Information was drip-fed to HMRC; ownership of properties was disclosed only upon repeated promptings; avowals of no income from multiple properties at the July 2014 meeting were subsequently contradicted by the provision of limited information; the explanations  
30 offered on the loan arrangement to purchase 4 James Street raise justifiable suspicion; and the inconsistencies between what the taxpayer has disclosed and what HMRC's alternative sources of information suggest are too numerous to enumerate here.

69. The example of 30 Darley Street gives the essential flavour of what HMRC are dealing with. The property did not feature in any of the SA returns; it was not  
35 disclosed in the email (April 2014) responding to the first Sch 36 notice; it was only disclosed in the July 2014 meeting after promptings; it was then said to be Mr Featherstone's ex-partner's house and that she continues to live there rent free.

70. Mr Ram's letter of 9 October 2014 gave a completely different account of 30  
40 Darley Street: '[P Wilkinson], being a good friend to Mr Featherstone, stayed since 6 April 2008 till Feb 2010 rent free. [C Spencer] moved in since March 2010 paying £85 pw in cash.'

71. It was no longer the ex-partner living at 30 Darley Street rent free but two separate tenants, one admittedly paying rent. Nor was it from 6 April 2008 that Wilkinson lived at the property, for HMRC have information that he resided there before that date. The property was purchased in December 1994 for £20,500; it makes  
5 no commercial sense that Mr Featherstone would have laid down the capital to purchase the property, and to continue to pay out expenses in maintaining the property, without any expectation of some return on his capital or for his efforts, from at least 2008 (possibly earlier) to the beginning of 2010 – for the sake that his friend Mr Wilkinson could enjoy rent-free accommodation. It would seem to be the  
10 taxpayer’s position that no rentals were received on this property prior to February 2010; that would mean a long duration of 15 years plus without any return.

72. The circumstances of 30 Darley Street should make any investigator justifiably suspicious. Such irregularity is not confined to this particular property, but represents the essential flavour of the nature and substance of any information that was first  
15 disclosed by the taxpayer. Another pertinent example is the ‘loan’ to the Housecrofts. What would have been the arrangements to motivate the taxpayer to commit capital in the sum of £100,000 in July 2005 with no expectation of any return from that capital other than its repayment over time unspecified, while he himself has led a frugal life?

73. The taxpayer gave explanations on the largesse he had bestowed on family  
20 members, ex-partner, neighbours, and friends in relation to their occupation of these properties he owns, including the latest acquisition of 2 Peaseland Avenue as an act of benefaction to his daughter. Some of these explanations were later contradicted, but others remain. If the taxpayer had been the benefactor to these numerous beneficiaries, to whatever extent, over a period of two decades, it is amply justifiable  
25 for HMRC to query how the capital had accrued over these decades for him to acquire these properties, and in some cases, for the largesse to be bestowed.

74. Against the level of income that has been declared on a year on year basis, HMRC are entitled to pursue the question regarding the source of funding to purchase  
30 The George Hotel in the year of enquiry, and possibly the purchase of other properties over the last two decades. Against the background of a portfolio of properties that had not returned any income for a protracted period, the underlying suspicion must be that the taxpayer’s income is substantially greater than it appears to be.

75. The enquiry to date has just touched the surface and it will require a substantial  
35 amount of time to fathom the true extent of under-declaration of income that appears to have been going on for a decade or two. The disclosure of the information to date by the taxpayer raises a host of questions that require more investigation and can be addressed probably only by information requests made to third parties.

76. The taxpayer has been given numerous opportunities to provide substantive  
40 information and documents to assist HMRC in their enquiries. In the light of what has been asserted by the taxpayer that he has provided *everything*, and for the reasons already stated as regards the quality and authenticity of the information that has been provided so far, the Tribunal agrees with HMRC’s suggestion that to progress with the enquiry will necessitate third-party information requests to be made. Such

information requests will take considerable time, since third-party information notices need to be applied to the Tribunal before they can be served, and various third parties need to be given time for the return of the requested information.

5 77. Other issues outwith the substantive enquiries that will take time for careful consideration include the categorisation of behaviour leading to the inaccuracies in the SA returns in order to establish the basis of the penalty assessments, and the determination of whether the discovery assessments should be extended from six to twenty years. For these reasons, no specific time limit can be stipulated at this stage as to when it is reasonable for HMRC to conclude their enquiries.

10 *Alleged delay and HMRC's conduct*

78. A main ground of the application is that it had taken HMRC seven months to respond to the information provided in the autumn of 2014. It was apparent, even from the limited information provided, that the taxpayer's tax position had changed dramatically, from having little or no income returnable in the years concerned to  
15 having hitherto undisclosed income from a portfolio of some five or six properties over a protracted period of time. To assess the quality of the information provided has required corroboration with other records, such as the verification of the duration of a tenancy in relation to a property. The scope of the enquiry has widened significantly and the complexity has increased accordingly. In our view, the time taken for  
20 HMRC's response in May 2015 was reasonable in the circumstances because the information and documents provided up to that point gave cause to widen the enquiry.

79. We should indicate at this point that we found Officer Bagshaw to be a reliable and credible witness. Her oral evidence was clear and balanced; her letters of May and July 2014 reflected her fair and thorough evaluation of the information and  
25 documents provided so far, and her further information requests were supported by clear reasons. The previous officer, Mrs Knight, was similarly balanced and thorough in her approach, and was particularly fair in giving the time and opportunity to allow the taxpayer to make a full and complete disclosure.

80. The length of time taken for HMRC to respond is a direct consequence of the  
30 total lack of business records being kept by the taxpayer to discharge his obligations to file complete and accurate SA returns over the years. The delay by HMRC cannot be said to be 'excessive' as Mr Ram alleged in his email of 12 August 2015 in view of the taxpayer's failure to keep adequate records in the first place, which has necessitated the painstaking and laborious efforts on HMRC's part to evaluate the  
35 substance of the information thus provided. The observations by the Special Commissioner in *Doyle v Revenue and Customs* [2005] UKSPC 00499 are equally apt in this case:

40 'A taxpayer cannot ... deploy his own lack of co-operation and inability to keep adequate business records ... which causes the Revenue to expend substantially more time and resources on the investigation of his financial circumstances than they would normally do, to argue that their conduct has somehow been disproportionate ...'

81. Self-assessment places the onus on every taxpayer to make accurate and complete returns; here the taxpayer would seem to have failed that statutory obligation on multiple levels over a protracted period of time. On enquiry into such taxpayer's tax affairs, HMRC have a public duty to assess him to the correct amount of tax to the best of their judgment in the light of available information. As Henderson J stated in the High Court decision on *Tower MCashback LLP 1 and another v HMRC* [2008] EWHC 2387 (Ch) (*'Tower MCashback'*) at [115]:

10                   ‘There is a venerable principle of tax law to the general effect that there is a public interest in taxpayers paying the correct amount of tax, and it is one of the duties of the Commissioners in exercise of their statutory functions to have regard to that public interest.’

82. Procedurally, a premature closure of such enquiries can lead to unintended legal consequences, which are illustrated by the appellate history of *Tower MCashback*. Lord Walker, in giving the Supreme Court judgment on the case [2011] UKSC 19, stated at [13]: ‘A great deal of expensive legal argument might have been avoided if [the investigating officer] had stood his ground and insisted that he needed more time to consider the matter.’

83. Any direction to specify a time limit within which the closure notices are to be issued will frustrate the reasonable and legitimate enquiries that HMRC still need to undertake. To force the closure of such enquiries may lead to unintended legal consequences, or to the ultimate amendments and assessments being unduly low, or unduly high and be open to successful challenge – none of which will accord to the public interest for a proper closure of such enquiries, or be in the interests of justice.

**Conclusion**

84. For the reasons as stated, the Tribunal is satisfied that there are reasonable grounds for not issuing a closure notice in relation to the year of enquiry or any of the related years, either at this stage or within any specified period. The application is accordingly refused.

85. 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.

**DR HEIDI POON  
TRIBUNAL JUDGE**

**RELEASE DATE: 7 NOVEMBER 2016**