



**TC06513**

**Appeal number: TC/2017/07235**

***INCOME TAX – application for closure notice under section 28A(4) Taxes  
Management Act 1970 – application refused***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**EBRAHIM BAHMANIZAD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JENNIFER DEAN**

**Sitting in public at Leeds on 21 May 2018**

**Mr Omran and Mr Fotheringham for the Appellant**

**Ms Cunliffe, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant applies under section 28A(4) of the Taxes Management Act 1970 ('TMA') for a direction that the Respondents ('HMRC') close their enquiry into the Self-Assessment tax return made by the Appellant for the year ended 5 April 2015. HMRC opened their enquiry on 23 March 2016 and the parties corresponded from April 2016 to the present date with information still being provided by the Appellant on the day of the hearing.

2. For the reasons set out below, I have decided to refuse the Appellant's application.

### Legislation

3. The relevant provision is section 28A TMA and is as follows:

“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) 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.”

4. It is clear that the burden is on HMRC to demonstrate, on the balance of probability, that there are reasonable grounds for not issuing the closure notice by virtue of section 28A(6) TMA which provides that the FTT 'shall' direct that HMRC issue a closure notice within a specified period, unless the FTT is satisfied that there are 'reasonable grounds' for not issuing the closure notice.

## Background and evidence

5. HMRC produced a joint bundle of documents for the hearing. There was a witness statement from the decision maker Officer Tiplady who also gave evidence. The Appellant provided a written response to Mr Tiplady's witness statement.

5 6. The Appellant is a sole trader who carries on a takeaway business trading as the Olive Garden in Newton Aycliffe. An initial request was made for information and documents when the enquiry was opened and following a review of the records Officer Tiplady identified various concerns including:

- More than one bank account being used in the business;
- 10 • A seemingly inadequate drawings figure to meet known expenditure;
- No till rolls were provided;
- The purchase of a van;
- A capital allowance claim.

7. Further information was requested on 16 September 2016 and provided by the Appellant's agent on 8 November 2016. Officer Tiplady identified various risks and, due to the Appellant's ill health, it was agreed that the Appellant would complete a questionnaire which was issued on 10 January 2017.

8. The questionnaire sought information in connection with both the business and the Appellant's personal and private expenditure. The questions related to the purchase of a vehicle used in the accounts and the source of various cash deposits into the business bank account. Following receipt of the completed questionnaire Officer Tiplady identified further areas of concern including household cash flow, a property in Barbados, the vague reference to "Iranian legacies" and sales figures. The concerns were discussed at a meeting between Officer Tiplady and the Appellant's representative however Officer Tiplady confirmed in evidence that he is not yet in a position to form an opinion as to the accuracy of the Appellant's return; conflicting and vague information has been given for instance in relation to the Barbados property, the source of the Iranian legacies, sales figures which are unsupported by till rolls and how the Appellant meets expenditure from the limited surplus that is apparently available to him.

9. In oral evidence Officer Tiplady explained that he had been provided with further documentation on the morning of the hearing but which he had not yet had the opportunity to review. He added that he was yet to receive information as to how the Barbados property was funded and whether it was rented, and he noted that the property had not been declared on the Appellant's return. In addition the Z readings provided were not sequential and Officer Tiplady was seeking to establish the accuracy of those readings but had yet to be provided with primary records. The Appellant had explained that he received large amounts in cash from Iranian legacies

and had recently added that he would be provided with cash by Iranian students to use in supporting them while in the UK yet there was no evidence of the cash deposits being withdrawn from the Appellant's accounts nor had the source of these cash deposits been disclosed. Officer Tiplady explained that he had issued a formal request  
5 for information on 28 September 2017 but no information had been provided (save that referred to in paragraph 8 above) since 14 June 2017. The information requested included the following:

- A one month sample of till rolls and corresponding Z readings for March 2017;
- Purchase invoice for Peugeot van purchased in accounting period ending 31  
10 March 2015;
- The date on which any Iranian legacies were received, from whom, their relationship to the Appellant and documentary evidence to illustrate how the money was received into the Appellant's bank account; and
- The date on which the Barbados property was purchased, the full address,  
15 purchase price, how the purchase was funded, title deeds and/or completion statement, any loan/mortgage agreements in relation to the property, any evidence of income from the property if rented out and annual costs such as maintenance or management fees.

10. On behalf of the Appellant it was submitted that Officer Tiplady has failed to  
20 identify the fraud alleged nor had he considered the analysis provided by the Appellant's representatives pertaining to sales figures and gross profit. There had been numerous requests for information, all of which has been supplied where possible. Officer Tiplady has failed to ask the right questions and had he identified the real issues earlier the matter could have been resolved. Mr Fotheringham and Mr  
25 Omran accepted that documentary evidence in respect of some of the queries, such as the Barbados property, had not yet been disclosed but highlighted that other information, such as that relating to the vehicle, formed part of the bundle of documents which had been provided shortly before the hearing. Further documents were in the Appellant's possession which would be handed over at the conclusion of  
30 the hearing.

### **Discussion and decision**

11. The issues for me to determine in relation to this application are:
- (i) Am I satisfied that HMRC have reasonable grounds for not issuing the closure notice?
  - 35 (ii) If not, what period should I specify within which HMRC must issue a closure notice?
12. In *Estate 4 Ltd v HMRC* [2011] UKFTT 269 (TC) the Tribunal stated:

5                   “... the test to be applied by the tribunal is whether on an objective view it is appropriate for a closure notice to be issued. This involves close scrutiny of the questions put to the taxpayer and its advisers, the information provided in response and its adequacy, and the extent to which it appears to the tribunal that further enquiry would produce information enabling the company’s corporation tax liability to be adjusted to a level differing from that shown in the return.”

10           13. In this case it is clear that the Appellant has cooperated with HMRC in providing some of the information requested. There has been delay as a result of the fact that the information has been provided by correspondence rather than meetings due to the Appellant’s ill health and the time taken to then review that material. Whilst it is clear that the Appellant is frustrated by the process, in my view the delay has been minimal.

15           14. In *Stephen Price v HMRC* [2011] UKFTT 624 (TC) the Tribunal stated:

20                   “HMRC is entitled to know the full facts related to a person’s tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody’s time if HMRC are forced to make assessments without knowledge of the full facts. The statutory scheme is that HMRC are entitled to full disclosure of the relevant facts: this is why they have a right to issue (and seek the issue of) information notices seeking documents and information reasonably required for the purpose of checking a tax return (see Schedule 36 of Finance Act 2008).”

25           15. Whilst the Appellant’s concern is understandable, Officer Tiplady confirmed in evidence that no allegation of fraud has been made against him; at present the Officer is simply trying to establish the accuracy of the Appellant’s return.

30           16. HMRC do not need to be certain that the figures are accurate in order to issue a closure notice. However it is clear from the fact that information was provided shortly before the hearing that further information is available that will affect the Appellant’s tax liability. Moreover it was accepted on behalf of the Appellant that the Officer’s requests for information in relation to the Barbados property, income and expenditure and Iranian legacies were all valid enquiries that had not yet been fully answered. For those reasons I take the view that the application must be refused.

35           17. I considered whether to direct that a closure notice should be issued within a certain period. It seems to me that the volume of information yet to be obtained is, at this stage, unknown and that which was recently provided may lead to additional requests. In those circumstances I cannot objectively specify a period and I do not therefore direct that a closure notice be given within a specified period.

40           18. I am satisfied that HMRC have reasonable grounds for not giving a closure notice within a specified period in relation to the enquiry into the Appellant’s tax return and the Appellant’s application is refused.

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.

**TRIBUNAL JUDGE DEAN**

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**RELEASE DATE: 30 May 2018**