Neutral Citation: [2022] UKFTT 132 (TC)

Case Number: TC 08463

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: : TC/2020/1788

CLOSURE NOTICE APPLICATION – taxpayer is partner in partnerships claiming Business Premises Renovation Allowances – enquiries opened into both taxpayer's return and partnerships' returns – ss 9A & 12AC TMA 1970 – whether s 9A enquiry should be closed while s 12AC enquiries continue

Heard on: 10 January 2022
Judgment date: 19 April 2022

Before

TRIBUNAL JUDGE KEMPSTER

Between

MR WILLIAM STOCKLER

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: The Appellant appeared in person

For the Respondents: Mr David Street, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

THE HEARING

1. The hearing took place on 10 January 2022. The form of the hearing was a video hearing conducted on the Tribunal video platform, and was facilitated by the Tribunal's administrative staff.. A face to face hearing was not held because of social restrictions in response to the pandemic.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

INTRODUCTION

3. Mr Stockler applies for a direction by the Tribunal requiring HMRC to issue a closure notice in respect of their enquiry into his self-assessment tax return for the tax year 2017-18 ("**the Application**"). HMRC resist the Application.

4. Mr Stockler is a partner in (or member of) several partnerships which have claimed Business Premises Renovation Allowances ("**BPRA**") (a 100% capital allowance for certain expenditure incurred converting or renovating unused business premises in a disadvantaged area) in relation to commercial property ventures.

5. I heard evidence from Ms Marika Kinsey, who was previously HMRC's Technical Lead for BPRA. Ms Kinsey explained the background to her work, in her witness statement dated 20 July 2020:

> "A typical marketed BPRA scheme would be set up as either a Limited Partnership ("LP") or a Limited Liability Partnership ("LLP"). Individuals would invest in the scheme via the partnership vehicle. The LP/LLP would acquire an interest in a property and enter into a Development Agreement for the renovation/conversion of the property.
>
> In the LP/LLP's Partnership Tax Return ("PTR") for the relevant tax year, a BPRA claim would be made and this would usually result in the LLP making a property loss for that tax year. Typically, the claim would be for either the entire or significant majority of the amount said to be incurred under the Development Agreement. The individual investors would then return their share of the BPRA claim and the property loss, by way of completing the partnership pages of their Income Tax Self Assessment ("ITSA") return for the relevant tax year.
>
> Where a valid claim to BPRA has been made, an individual is able to claim loss relief under s 120 Income Tax Act 2007 ("ITA07"). This allows them to claim property loss relief on the loss arising from the BPRA claim against their general income of the same or the following tax year. Alternatively, the loss can be carried forward to set against future profits of the same property business under s 118 ITA07: this does not require a claim, the legislation simply stating that "[r]elief is given".
>
> HMRC's enquiries into the schemes are by way of enquiries into the PTRs under s l2AC Taxes Management Act 1970 (TMA70). HMRC give the enquiry notice to the partner who made and delivered the return and will liaise with them during the course of the enquiry to gather information and documents which will assist HMRC in forming a view as to the accuracy of the submitted tax return.

> The legislative provisions tor claiming BPRA are contained in sections 360A to 360F of the Capital Allowances Act 2001. These provisions set out the criteria which must be met for expenditure incurred in connection with the conversion or renovation of a qualifying building to qualify for relief."

THE LAW RELATING TO ENQUIRIES AND CLOSURE NOTICES

6. Section 9A(1) Taxes Management Act 1970 ("**TMA 1970**") provides, "An officer of the Board may enquire into a return under section 8 … of this Act [ie an individual's income tax and capital gains tax self-assessment return] if he gives notice of his intention to do so ("notice of enquiry") (a) to the person whose return it is ("the taxpayer"), (b) within the time allowed." The "time allowed" is set by s 9A(2) as, broadly, one year from the later of the filing due date or the quarter day following the date filed – commonly referred to as the enquiry window.

7. If an enquiry is opened by HMRC pursuant to s 9A then the taxpayer has the right to apply to the Tribunal for a direction to HMRC that the enquiry be closed. Section 28A TMA 1970 provides, so far as relevant:

> "(4) The taxpayer may apply to the tribunal for a direction requiring an officer of the Board to issue a partial or final closure notice within a specified period.
> …
> (6) The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing the partial or final closure notice within a specified period.
> (7) In this section "the taxpayer" means the person to whom notice of enquiry was given. …"

8. Section 12AC TMA 1970 governs enquiries into partnership returns (ie returns required by s 12AA TMA 1970) and provides, so far as relevant:

> "(1) An officer of the Board may enquire into a partnership return if he gives notice of his intention to do so ("notice of enquiry")
>
> (a) to the partner who made and delivered the return, or his successor,
>
> (b) within the time allowed.
>
> …
>
> (4) An enquiry extends to anything contained in the return, or required to be contained in the return, including any claim or election included in the return …
>
> (6) The giving of notice of enquiry under subsection (1) above at any time shall be deemed to include the giving of notice of enquiry—
>
> (a) under section 9A(1) of this Act to each partner who at that time has made a return under section 8 or 8A of this Act or at any subsequent time makes such a return, or
>
> (b) under paragraph 24 of Schedule 18 to the Finance Act 1998 to each partner who at that time has made a company tax return or at any subsequent time makes such a return. …"

9. Section 28B governs closure notices in respect of partnership return enquirires:

> "**28B Completion of enquiry into partnership return**
>
> (1) This section applies in relation to an enquiry under section 12AC of this Act.

(1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "partial closure notice") that the officer has completed his enquiries into that matter.

(1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "final closure notice")—

(a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or

(b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.

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

(2) A partial or final closure notice must state the officer's conclusions and—

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

(b) make the amendments of the return (including anything included in the return by virtue of section 12ABZB(7)(b) (amendment of partnership return following reference to tribunal)) required to give effect to his conclusions.

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

(4) Where a partnership return is amended under subsection (2) above, the officer shall by notice to each of the partners amend—

(a) the partner's return under section 8 or 8A of this Act, or

(b) the partner's company tax return,

so as to give effect to the amendments of the partnership return.

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

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

(7) The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing the partial or final closure notice within a specified period.

(8) In this section "the taxpayer" means the person to whom notice of enquiry was given or his successor.

(9) In the Taxes Acts, references to a closure notice under this section are to a partial or final closure notice under this section."

10. I respectfully agree with the preferred judicial approach to closure notice applications set out by Judge Sarah Falk, as she then was, in *Beneficial House (Birmingham) Regeneration LLP & Stanley Dock (All Suite) Regeneration LLP v HMRC* (2017) UKFTT 0801 (TC), at [15]:

"There was no dispute as to the relevant principles to apply. Both parties referred to my decision in *BCM Cayman LP and others v HMRC* [2017] UKFTT 0226 (TC), which reviewed the relevant case law. I would also refer to the subsequent Upper Tribunal decision in *Frosh and others v HMRC* [2017] UKUT 0320 (TCC). In summary:

(1) The procedure is intended as a protection to a taxpayer against enquiries being inappropriately protracted, providing a "reasonable balance" to HMRC's substantial powers to investigate returns (*HMRC v Vodafone 2*

[2006] STC 483 at [33] and [34]) and protecting the taxpayer against undue delay or caution on the part of the officer in closing the enquiry (*Eclipse Film Partners No 35 LLP v HMRC* [2009] STC (SCD) 293 at [17]). The Tribunal is required to exercise a value judgment, determining what is reasonable on the facts and circumstances of the particular case (*Frosh* at [43]). This involves a balancing exercise.

(2) The reasonable grounds that HMRC must show must take account of proportionality and the burden on the taxpayer (*Jade Palace Limited v HMRC* [2006] STC (SCD) 419 at [40]).

(3) The period required to close an enquiry will vary with the circumstances and complexity of the case and the length of the enquiry: complex tax affairs and large amounts of tax at risk are likely to extend an enquiry, but the longer the enquiry the greater the burden on HMRC to show reasonable grounds as to why a time for closure should not be specified (*Eclipse Film Partners*, and *Jade Palace* at [42] to [43]). It may be appropriate to order a closure notice without full facts being available if HMRC have unreasonably protracted the enquiry: see *Steven Price v HMRC* [2011] UKFTT 264 (TC) at [40].

(4) A closure notice may be appropriate even if the officer has not pursued to the end every line of enquiry. What is required is that the enquiry has been conducted to a point where it is reasonable for the officer to make an "informed judgment" of the matter (*Eclipse Film Partners* at [19]).

(5) If it is clear that further facts are or are likely to be available or HMRC has only just received requested documents and may well have further questions, then a closure notice may not be appropriate: see for example *Steven Price*, and also *Andreas Michael v HMRC* [2015] UKFTT 577 (TC). The Tribunal should guard against an inappropriate shifting of matters that should be determined by HMRC during the enquiry stage to case management by the Tribunal. However, the position will turn on the facts and circumstances of each case: *Frosh*.

(6) The Supreme Court's comments on the subject of closure notices in *HMRC v Tower MCashback LLP* [2011] UKSC 19, [2011] 2 AC 457 are highly relevant. In particular, Lord Walker commented that whilst a closure notice can be issued in broad terms, an officer issuing a closure notice is performing an important public function in which fairness to the taxpayer must be matched by a "proper regard for the public interest in the recovery of the full amount of tax payable", although where the facts are complicated and have not been fully investigated the "public interest may require the notice to be expressed in more general terms" (paragraph [18]). Lord Hope also said at [85] that the officer should wherever possible set out the conclusions reached on each point that was the subject of the enquiry. In *Frosh* the Upper Tribunal commented at [49] that a closure notice in broad terms is "not the norm" and so should not be taken as an appropriate yardstick for assessing whether HMRC's grounds for not closing the enquiry are reasonable."

THE LAW RELATING TO PROPERTY LOSSES

11. So far as relevant, Part 4 Chapter 4 Income Tax Act 2007 ("**ITA 2007**") provides:

"**117 Overview of Chapter**

(1) This Chapter—

(a) provides for losses made in a UK property business or overseas property business in a tax year to be carried forward for deduction from profits in subsequent tax years (see sections 118 and 119),

(b) provides in limited circumstances for relief against general income for losses made in a UK property business or overseas property business (see sections 120 to 124), …

118 Carry forward against subsequent property business profits

(1) Relief is given to a person under this section if the person—

(a) carries on a UK property business or overseas property business (alone or in partnership) in a tax year, and

(b) makes a loss in the business in the tax year.

(2) The relief is given by deducting the loss in calculating the person's net income for subsequent tax years (see Step 2 of the calculation in section 23).

(3) But a deduction for that purpose is to be made only from profits of the business.

(4) In calculating a person's net income for a tax year, deductions under this section from the profits of a business are to be made before deductions of any other reliefs from those profits.

(5) No relief is to be given under this section so far as relief for the loss is given under section 120. …

120 Deduction of property losses from general income

(1) A person may make a claim for property loss relief against general income if—

(a) in a tax year ("the loss-making year") the person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership), and

(b) the loss has a capital allowances connection or the business has a relevant agricultural connection.

(2) The claim is for the applicable amount of the loss to be deducted in calculating the person's net income—

(a) for the loss-making year, or

(b) for the next tax year.

(See Step 2 of the calculation in section 23.)

(3) The claim must specify the tax year for which the deduction is to be made.

(4) But if the applicable amount of the loss is not deducted in full in giving effect to a claim for the specified tax year, the person may make a separate claim for property loss relief against general income for the other tax year.

(5) For this purpose "the other tax year" means the tax year which was not specified in the claim already made, but which could have been specified. …"

THE FACTS OF THIS CASE

12. In his self-assessment tax return for the tax year 2016-17 (ie the tax year preceding the one covered by the Application) Mr Stockler included property losses arising from the following partnerships:

(1) Maven Capital (Cardiff) LP ("**the Maven Cardiff Partnership**");

(2) Maven Capital (Shire Hall Durham) LP;

(3) Maven Capital (Telfer House) LLP; and

(4) Maven Capital (Douglas House) LP.

13. In January 2019 HMRC purported to open a s 9A enquiry into Mr Stockler's 2016-17 return, but in February 2019 they confirmed that the enquiry was opened outside the enquiry window, and so was invalid as being out-of-time.

14. In his self-assessment tax return for the tax year 2017-18 (ie the tax year covered by the Application) Mr Stockler included income from the Stanley Dock (All Suite) Regeneration LLP ("**the Stanley Dock Partnership**"). That return also included a claim for property loss relief in respect of the Maven Cardiff Partnership; these losses arose in the tax year 2016-17 but the claim was for relief against total income for the tax year 2017-18.

15. In December 2019 HMRC opened a s 9A enquiry into Mr Stockler's 2017-18 return.

16. On 15 May 2020 Mr Stockler made the Application to the Tribunal, pursuant to s 28A.

17. From the documents provided to me and from Ms Kinsey's evidence I find:

(1) HMRC opened s 12AC enquiries, which are ongoing, into the partnership tax returns of the Maven Cardiff Partnership for the tax years 2014-15, 2015-16 and 2016-17[1]. The property losses arose from arrangements, disclosed to HMRC under the Disclosure of Tax Avoidance Schemes ("**DOTAS**") rules, entered into by the Maven Cardiff Partnership. HMRC have been dealing with the partnership's nominated partner (who is not Mr Stockler) and the agent appointed for the partnership in respect of the s12AC enquires. Most of the information and documents requested by HMRC has been supplied to HMRC and reviewed by HMRC, but HMRC may ask for more information and expect that a referral to the Valuation Office Agency will be required. No request for a closure notice (under s 28B(5)) has been made to the Tribunal by the nominated partner or the authorised agent.

(2) HMRC opened a s 12AC enquiry, which is ongoing, into the partnership tax return of the Stanley Dock Partnership for the tax year 2017-18. HMRC have been dealing with the partnership's nominated partner. Some information and documents requested by HMRC has been supplied to HMRC, and HMRC have asked for more information. No request for a closure notice (under s 28B(5)) for the 2017-18 enquiry has been made to the Tribunal by the nominated partner; closure notices have been issued in respect of enquiries into earlier years, and are under appeal to the Tribunal..

(3) Mr Stockler's share of the property loss of Maven Cardiff Partnership was returned on the partnership pages of his 2016-17 self-assessment return at Box 36. Box 39 states that £l5,130 of that loss is to be set off against 2016-17 total income. The amount entered in Box 40 (loss to be carried forward after any set offs) is £292,199. In Box 21 (white space) it states: "BPRA of 250,992 arising on scheme 57693147 (Maven Capital Cardiff LP) to be claimed against other income of 2017/18." On the partnership pages of Mr Stockler's 2017-18 self-assessment return Box 21 (white space) states: "BPRA of £250,992 arising from scheme 57693147 (Maven Capital Cardiff LP) brought forward from 2016/17 is to be claimed against other income but there is no provision in the partnership pages of this return to enter such claim." Beneath the entry in Box 39 (loss

[1] For completeness, HMRC also opened s 12AC enquiries, which are ongoing, into the partnership tax returns of some of the other partnerships listed at [12] above.

set off against 2017-18 total income) of the partnership page for Maven Cardiff Partnership is a handwritten entry which states: "BPRA b/fd from 2016/17 £250,992.00".

HMRC'S CASE

18. Mr Street stated HMRC's case as follows:

(1) HMRC accepted the burden of proof lay on them, to satisfy the Tribunal that there are reasonable grounds for not issuing the closure notice for the s 9A 2017-18 enquiry within a specified period.

(2) The issue of a closure notice is not something that ought to be taken lightly. It is a significant event. HMRC must have the opportunity to conduct an enquiry to a point whereby it is reasonable to conclude and, if necessary, make amendments to the return under enquiry.

(3) There is a reasonable balance to be made between HMRC's substantial powers to investigate a return, and protecting the taxpayer from undue delay.

(4) For HMRC to be able to conclude the s 9A 2017-18 enquiry, further time is required so as to be able to make an informed judgement on the following:

(a) Income arising from the Stanley Dock Partnership;

(b) The claim on Mr Stockler's 2017-18 in respect of the losses derived from BPRA from the Maven Cardiff Partnership from the previous tax year, that claim being to set the losses against his general income for the latter period.

(5) To be able to make an informed judgment of the aforementioned items, HMRC must first establish the accuracy of the relevant partnership returns.

(6) The partnership enquiries are ongoing. Mr Stockler is not in a position to request closure notices with regard to these relevant Partnership enquiries as the s 12AC TMA 1970 notice was not issued to him.

(7) It is not reasonable to require the s 9A 2017-18 enquiry to be closed at this time; that would be premature considering the ongoing work on the partnership enquiries. The use of estimated figures from uncompleted enquiries would give rise to further uncertainties and probably litigation.

Maven Cardiff Partnership

(8) The availability of losses is not determined until such a time as the Maven Cardiff Partnership enquiry for the tax year 2016-17 is concluded. If the losses are amended as a result of the partnership enquiry, Mr Stockler's 2017-18 return will also be amended to give effect to the amendments made to the partnership return.

(9) The enquiry into the Maven Cardiff Partnership partnership return for the tax year 2016-17 gives rise to a "deemed enquiry" into Mr Stockler's self-assessment return for 2016-17, by virtue of s 12AC(6) TMA 1970. Upon the conclusion of the s12AC enquiry HMRC will amend the partnership tax return to give effect to their conclusions. HMRC will then amend Mr Stockler's self-assessment return for 2016-17 to give effect to the amendments to the partnership tax return, per s 28B TMA 1970. Accordingly, it is not correct to say that the 2016-17 loss, arising from the BPRA claim made by the Maven Cardiff Partnership is not subject to challenge.

(10) Furthermore, although the loss arose in 2016-17, Mr Stockler's claim to loss relief (under s 120 ITA 2007) was made in his 2017-18 return. HMRC are therefore entitled to enquire into the claim by virtue of the s 9A enquiry into his 2017-18 return. Section

9A(4) TMA 1970 states, "an enquiry extends to anything contained in the return, or required to be contained in the return, including any claim or election included in the return". As such, the loss relief claim in the 2017-18 return was subject to the enquiry from the outset. HMRC accepted that the Maven Cardiff Partnership was not expressly mentioned in the enquiry opening letter, but subsequent correspondence was clear that the losses of the Maven Cardiff Partnership were a key point of interest.

Stanley Dock Partnership

(11) The s 12AC enquiry into the Stanley Dock Partnership's 2017-18 partnership return remains open. HMRC have not accepted the amended figures filed by the partnership. Information and documents have been requested but only some have been provided; it may prove necessary to use statutory powers to obtain the required information. At this stage, HMRC are unable to arrive at a reasonable conclusion.

(12) The result of the s 12AC enquiry into the Stanley Dock Partnership is that there is an enquiry into Mr Stockler's self-assessment return for the same period, by virtue of s 12AC(6). If the partnership return is amended as a result of HMRC's enquiry, Mr Stockler's self-assessment return will be amended to give effect to the amendments made to the partnership return under s 28B(4) TMA 1970.

(13) Until HMRC are able to establish the correct figures to be determined as the Stanley Dock Partnership's income for 2017-18, it is not possible to determine Mr Stockler's share of that income for the period; thus HMRC are unable to conclude the enquiry into Mr Stockler's 2017-18 self-assessment return.

(14) While Mr Stockler was keen to have immediate finality on the position of the partnership enquiries, there were other partners who might consider that further deliberations with a view to more accurate figures could achieve a better outcome and reduce future litigation. That was a call for the nominated partner of the relevant partnership, not for individual partners to force the position.

MR STOCKLER'S CASE

19. Mr Stockler stated his case as follows:

(1) He believed his self-assessment returns for the 2016-17 and 2017-18 tax years were correct.

(2) Correspondence from HMRC had not clearly expressed the nature or scope of their enquiries, and had been misleading. For example, the letter opening the s 9A enquiry into his 2017-18 return referred only to the income from the Stanley Dock Partnership, and not the Maven Cardiff Partnership losses.

(3) It was not correct that the 2017-18 position of the Stanley Dock Partnership could be influenced by the outcome of closure notices issued in relation to earlier tax years, which were in any event disputed and under appeal before the Tribunal.

(4) He had made a valid claim in his self-assessment return for the tax year 2016-17 for his share of the losses derived from BPRA from the Maven Cardiff Partnership. That return was final and binding, and HMRC acknowledged that no valid s 9A enquiry had been opened into that return. The claim in his self-assessment return for the tax year 2017-18 was for his share of the same losses from the Maven Cardiff Partnership which had not been claimed in the previous tax year; the carry forward element of the loss was not challengeable by HMRC as the total loss itself had already been agreed by inclusion in the undisputed 2016-17 return.

(5) It could not be the case that where HMRC had agreed his 2016-17 return, by not opening a valid s 9A enquiry into the return, then the return was still somehow "open" because HMRC were enquiring into the returns of other persons (here, the Maven Cardiff Partnership and the Stanley Dock Partnership).

(6) There was no logic to why HMRC would choose to open a s 9A enquiry into his returns in respect of issues related to the Maven Cardiff Partnership and/or the Stanley Dock Partnership, when they claimed that the s 12AC enquiries into the returns of those partnerships achieved the same effect.

(7) He was keen to achieve finality in his tax affairs. Like several of the other partners in the relevant partnerships, he was now in his seventies and wished to put his affairs in order to save any inconvenience to his successors. It was unfair for his tax affairs to remain in limbo for several years with no date for resolution of the uncertainties. Despite HMRC's protestations, the matters apparently in dispute were not overly complicated; while some BPRA schemes were complex, both the Maven Cardiff Partnership and the Stanley Dock Partnership were "vanilla" examples where, he understood, all information requested by HMRC had already been provided.

DECISION

20. Having carefully considered the submissions of both parties and the documentation provided to me, and having studied the relevant statutory provisions, I make the following findings for the reasons given below.

21. First, I do not agree with Mr Stockler's contention that where the enquiry window has closed on an individual's self-assessment return without any adjustment by a s 9A enquiry (as is the case with his 2016-17 return) then that return is protected from or invulnerable to adjustment pursuant to the partnership return enquiry and adjustment provisions in s 12AC & 28B. On the contrary, I conclude that is exactly what is stated and intended by the provisions in s 12AC(6): the giving of notice of enquiry to a partnership under s 12AC(6) at any time is deemed to include the giving of notice of enquiry under s 9A(1) to each individual partner. There are limitations:

(1) The partnership enquiry must be opened within the enquiry window for the partnership return, and meet the other requirements of s 12AC.

(2) The notice of enquiry must be given to the nominated partner (ie the partner who made and delivered the return, or their successor), and all matters relating to the enquiry must be dealt with through the nominated partner, rather than by HMRC dealing with the other partners in the partnership. That includes any request for the partnership enquiry to be closed – see s 28B(5-9) TMA 1970. I understand that HMRC usually inform the partners that a partnership enquiry has been opened, but that is a matter of administration (and it is a good practice) rather than a legislative requirement.

(3) Although the partnership enquiry results in a notice of enquiry to each partner, that deemed notice extends only to the partnership aspects of that partner's individual return. It does not result in other non-partnership aspects of the partner's return being under enquiry; if HMRC wish to enquire into non-partnership aspects of the partner's return then they must open a separate s 9A enquiry into those aspects (and that would be subject to the normal rules in s 9A, including the enquiry window).

(4) Where a partnership return is amended, HMRC must notify each partner that the partner's individual return is being amended "so as to give effect to the amendments of the partnership return": s 28B (4) TMA 1970.

(5) Although not applicable to the facts of the current case, I would note that similar provisions apply where HMRC make a discovery assessment against a partnership (which could happen several years after the enquiry window on the relevant year has closed). Section 30B(2) TMA 1970 provides: "Where a partnership return is amended under subsection (1) above, the officer shall by notice to each of the relevant partners amend … the partner's return under section 8 or 8A of this Act, … so as to give effect to the amendments of the partnership return."

22. Secondly, from the evidence available I am satisfied that Mr Stockler did make claims under s 120 ITA 2007 to deduct (his share of) the Maven Cardiff Partnership loss incurred in 2016-17 (i) as to £15,130 against his general income for 2016-17, and (ii) as to £250,992 against his general income for 2017-18. The entries on his self-assessment returns for those two tax years (see [17(3)] above) clearly state what he is doing, and are in accordance with what is permitted by s 120. Tracking the wording of s 120, he made a separate claim for property loss relief against general income for the other tax year (2017-18) for the applicable amount of the loss not deducted in full in giving effect to a claim for the specified tax year (2016-17).

23. Thirdly, I note Mr Stockler's submissions on how HMRC explained the areas of interest in their letters opening the s 9A enquiries. It would have made matters clearer to him if those letters had expressly referred to the Maven Cardiff Partnership, as (it appears) it is the loss arising to that partnership which is the principal point of dispute with HMRC. However, I conclude there is nothing here which in any way limits or invalidates the s 9A enquiry for 2017-18; s 9A(4) provides, "an enquiry extends to anything contained in the return, or required to be contained in the return, including any claim or election included in the return".

24. Fourthly, I note Mr Stockler's wish to achieve finality in his tax affairs for the tax years 2016-17 and 2017-18, but the fact that those years have not yet been finalised is, I consider, primarily due to his having decided to participate in several DOTAS registered tax avoidance schemes. HMRC are entitled to investigate the operation of those schemes and reach a conclusion on their effectiveness and outcome. Ms Kinsey indicated that HMRC are currently scrutinising around 70 BPRA schemes, which investigations are at varying degrees of progress from information gathering, to closure notices being contested before the Tribunal, to an Upper Tribunal decision currently on appeal to the Court of Appeal (*London Luton Hotel BPRA Property Fund LLP v HMRC* [2021] UKUT 0147 (TCC)). That is clearly a task to occupy a large amount of time, and I note that no enquiry closure application (in relation to the relevant tax years) has been made by the nominated partners of either the Maven Cardiff Partnership or the Stanley Dock Partnership. I accept Ms Kinsey's evidence that HMRC still require more information from the Maven Cardiff Partnership before they are able to satisfy themselves as to the correct calculation of property losses incurred in 2016/17 (and earlier years), and that the nominated partner of Maven Cardiff Partnership has not requested closure of the 2016-17 enquiry. I also accept Ms Kinsey's evidence that HMRC still require more information from the Stanley Dock Partnership before they are able to close their 2017-18 enquiry, and that the nominated partner has not requested closure of that enquiry; further, that the disputed closure notices for earlier tax years that are currently in litigation before the Tribunal, may be relevant to the calculations necessary to formulate a closure notice for the 2017-18 partnership enquiry.

25. From the above points I conclude as follows.

(1) Mr Stockler's self-assessment return for 2016-17 is the subject of a deemed s 9A enquiry by virtue of the s 12AC enquiry into the Maven Cardiff Partnership for 2016-17.

(2) Mr Stockler's self-assessment return for 2017-18 is the subject of:

(a) The s 9A enquiry notified to him on 11 December 2019 – this is the subject matter of the Application.

(b) A deemed s 9A enquiry by virtue of the s 12AC enquiry into the Stanley Dock Partnership for 2017-18.

(3) The s 9A enquiry for 2017-18 which is the subject matter of the Application (ie item (2)(a) above) extends to anything contained in Mr Stockler's 2017-18 return, or required to be contained in the return, including any claim or election included in the return. That includes his s 120 ITA 2007 claim to deduct £250,992 losses against his general income for 2017-18.

(4) It is appropriate and proper for HMRC's s 9A enquiry for 2017-18 which is the subject matter of the Application (ie item (2)(a) above) to continue at present, as the quantum of the property losses available from the Maven Cardiff Partnership is still under investigation and may yet be adjusted pursuant to s 28B TMA 1970. HMRC have not inappropriately protracted or unreasonably delayed their partnership return enquiries, which concern the complex tax affairs and large amounts of tax at stake in a number of DOTAS registered tax avoidance schemes. Those enquiries have not yet been conducted to a point where it is reasonable for HMRC to make an informed judgement on the matters. The outcome of those partnership enquiries is central to HMRC's s 9A enquiry into Mr Stockler's self-assessment return for 2017-18 which is the subject matter of the Application.

(5) That conclusion (in (4) above) is not affected by (i) the fact that the loss offset claimed for 2017-18 is for the amount of the loss "not deducted in full in giving effect to a claim for" 2016-17; nor by (ii) the fact that HMRC did not open a valid s 9A enquiry into Mr Stockler's 2016-17 return, given that there is a deemed 9A enquiry by virtue of the s 12AC enquiry into the Maven Cardiff Partnership's partnership return for 2016-17.

26. For those reasons I am satisfied that at this time there are reasonable grounds for not directing HMRC to issue a closure notice in respect of HMRC's s 9A enquiry for 2017-18, which is the subject matter of the Application.

DECISION

27. The Application is REFUSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

28. 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.

JUDGE PETER KEMPSTER
TRIBUNAL JUDGE

Release date: 20 APRIL 2022