Tax update

August 2016

In this month's edition we report on (1) HMRC's new guidance on contracting-out for defined benefit pension schemes (2) this years' tax take, (3) a new EU directive aimed at reducing corporate tax avoidance. We also comment on three recent cases concerning the validity of a discovery assessment, the tribunal's hardened approach to compliance with directions, and the validity of a notice of enquiry.

News items

HMRC issues guidance on ending the contracting-out for defined benefit pension schemes

HMRC has published guidance for pension administrators on the end of "contracting-out" for defined benefit pension schemes, following the introduction of the new state pension, and has warned it will not track contracted-out rights or issue statements to pension schemes. more›

How to make £536.8bn in a year...

HMRC's latest accounts show an annual tax take of £536.8bn. This figure exceeded its target for additional revenues (the sixth consecutive year this amount has increased). more›

EU adopts corporate tax avoidance directive

The European Council has adopted a directive aimed at reducing corporate tax avoidance by large companies and their subsidiaries (the Directive). The Directive includes interest deductibility and exit taxation rules which are set to come into force by 2018. more›

Case reports

Anderson – tribunal finds that HMRC was not entitled to issue a discovery assessment

In *Anderson v HMRC*[1], the First-tier Tribunal (FTT) allowed the taxpayer's appeal and held that HMRC was not entitled to issue a discovery assessment pursuant to section 29(1) TMA, as the taxpayer had not been careless. more›

Grindley & Others – failure to comply with direction leads to strike out of taxpayers' appeals

In the recent case of *Grindley & Others v HMRC*[3], the FTT has directed that the taxpayers' appeals be struck out for failure to comply with a direction issued by the FTT. more›

Any comments or queries

Adam Craggs
Partner
+44 20 3060 6421
adam.craggs@rpc.co.uk

Robert Waterson
Senior Associate
+44 20 3060 6245
robert.waterson@rpc.co.uk

About this update

The Tax update is published on the first Thursday of every month, and is written by members of RPC's Tax Dispute team.

We also publish a VAT update on the final Thursday of every month, and a weekly blog, RPC Tax Take.

To subscribe to any of our publications, please click here.

Mabbutt – tribunal allows taxpayer's appeal as HMRC's notice of enquiry was invalid

The following is based on an article which was published in Tax Journal on 22 July 2016.
Click here to view. **more›**

News items

HMRC issues guidance on ending the contracting-out for defined benefit pension schemes

HMRC has published guidance for pension administrators on the end of "contracting-out" for defined benefit pension schemes, following the introduction of the new state pension, and has warned it will not track contracted-out rights or issue statements to pension schemes.

The guidance highlights how the ending of contracting-out will affect pension entitlements, and states that administrators will need to check members' Guaranteed Minimum Pension (GMP).

Under the new rules, administrators are required to make sure that members' entitlements resulting from contracted-out employment are protected. They also have to provide a GMP to members for contracted-out service between 6 April 1978 and 5 April 1997 (a GMP is payable at age 60 for a women and 65 for a man).

In order to calculate the GMP, HMRC is providing an online service which can be accessed via a government gateway account for the pension scheme online service.

HMRC's guidance can be found here.

Back to contents>

How to make £536.8bn in a year...

HMRC's latest accounts show an annual tax take of £536.8bn. This figure exceeded its target for additional revenues (the sixth consecutive year this amount has increased).

Tax revenues were 3.7% (£19.1bn) up on the previous year, driven by a 3.8% increase in income tax and national insurance contributions (NICs) bringing in an additional £10.3bn. Corporation tax increased 9.9% or £4.1bn, and VAT by £2.1bn (1.8%).

Capital gains tax and insurance premium tax also recorded significant increases, by 28.1% (to £7.3bn); and 27.6% (to £3.7bn), respectively. Inheritance tax was up by £300m or 7.9%. The annual cost of running HMRC was £3.2bn in 2015-16, compared to £3.1bn in 2014-15.

HMRC's estimate of the compliance tax yield in 2015-16 was £26.6bn (against a target of £26.3bn).

In its commentary, the National Audit Office (NAO) was highly critical of the way in which HMRC calculates compliance yield, which it says is not simply a cash figure.

The NAO says compliance estimates draw on "a range of different measures of revenue generated or losses prevented all of which involve a degree of estimation and uncertainty" and wants HMRC to provide further explanation.

The NAO also says that HMRC has yet to estimate the costs for individual taxpayers or businesses of making the transition to online services (or indeed to quantify the benefits they can expect from developments such as digital tax accounts).

As part of a major overhaul of tax services, HMRC is required to achieve a targeted £643m in savings. There will need to be further cuts in staff numbers, and by 2021 HMRC expects to cut 9,600 jobs (around 16% of total staff numbers), from its current base of 60,000.

HMRC's Annual Report can be found here.

Back to contents>

EU adopts corporate tax avoidance directive

The European Council has adopted a directive aimed at reducing corporate tax avoidance by large companies and their subsidiaries (the Directive). The Directive includes interest deductibility and exit taxation rules which are set to come into force by 2018.

Member states will have until 31 December 2018 to transpose the Directive into their national laws and regulations, except for the exit taxation rules which will come into force from 31 December 2019.

The Directive is part of a January 2016 package of Commission proposals to strengthen rules against corporate tax avoidance. The package builds on the OECD's recommendations in 2015 to address tax base erosion and profit shifting (BEPS), endorsed by G20 leaders in November 2015.

The Directive covers all taxpayers that are subject to corporate tax in a member state, including subsidiaries of companies based in other countries.

The Directive was adopted without discussion at a meeting of the Economic and Financial Affairs Council on 17 June 2016.

A copy of the Directive can be found here.

Back to contents>

Case reports

Anderson – tribunal finds that HMRC was not entitled to issue a discovery assessment

In *Anderson v HMRC*[1], the First-tier Tribunal (FTT) allowed the taxpayer's appeal and held that HMRC was not entitled to issue a discovery assessment pursuant to section 29(1) TMA, as the taxpayer had not been careless.

Background

The taxpayer owned a 50% shareholding in and was a director of Anson Limited (Anson), a company which manufactured and marketed specialist oil and gas field products. The other 50% of the shares in Anson were held by the taxpayer's brother.

The taxpayer had held the shares in Anson since 1981, when his father set up the business. The taxpayer focused on the sales and financial aspects of the business whilst his brother focused on the operational aspects and product development. From the early 2000s the taxpayer took a less active role in the affairs of the business and stepped down as director in 2003 but remained a salaried employee.

On 4 April 2008, the taxpayer and his brother sold their shares in Anson to ANS (1002) Limited, a wholly owned subsidiary of ANS (1001) Limited (Hold Co). The consideration was the issue of shares in Hold Co. On 2 April 2009, the taxpayer and his brother sold their shares in Hold Co to National Oilwell Varco, for some £88m.

On 4 April 2008, the taxpayer made a disposal of his shares in Anson which triggered a taxable chargeable gain in the tax year 2007/08. It was not disputed that the gain was correctly calculated by reference to the open market value of the shares at the disposal date and that for capital gains purposes the taxpayer acquired the shares in Hold Co, which he received as consideration for the disposal, for an amount equal to that market value. The dispute related to the figure used by the taxpayer as the open market value.

In his tax return for 2007/08, the taxpayer used £36m as the open market value to be brought into account in the capital gains computation on the disposal. This was based on the shares in Anson having an open market value as at the date of disposal on 4 April 2008 of £72m. This was the amount of an offer for the purchase of all the shares in Anson made by the Weir Group (a FTSE 100 company with no connection to Anson) in March 2008.

During an enquiry into the taxpayer's 2008/09 return, HMRC queried the figure of £36m used by the taxpayer as the open market value of the shares. HMRC claimed that it had discovered that the market value at 4 April 2008 was a higher amount, thereby increasing the capital gain on the share sale from that shown in the taxpayer's return and that the taxpayer had been careless in using the lower, and in its view, incorrect open market value figure. Accordingly, it claimed that supplementary capital gains tax was due from the taxpayer.

As HMRC did not have an open enquiry in relation to the tax year 2007/08, on 26 February 2013, it issued a discovery assessment to the taxpayer, pursuant to section 29(1) TMA, in the sum of £830,387, in respect of capital gains tax in relation to the sale of the taxpayer's shares in Anson. The taxpayer appealed the assessment.

1. [2016] UKFTT 335 (TC).

FTT's decision

The first question to be determined by the FTT was whether there had been a discovery by HMRC. The FTT found that during an enquiry into the taxpayer's return for 2008/09, HMRC had queried the open market value figure of £36m provided by the taxpayer in his 2007/08 return. According to HMRC's Shares and Assets Valuation team, the open market value of the shares was higher than that used by the taxpayer. In the view of the FTT, this constituted a valid discovery for the purposes of section 29(1) TMA.

The second question to be decided by the FTT was whether the insufficiency of tax had been caused by carelessness on the part of the taxpayer. A loss of tax is brought about carelessly by a person if he "fails to take reasonable care" to avoid bringing about that loss (section 118(5) TMA). In the view of the FTT, the correct approach is to assess what a reasonable hypothetical taxpayer would have done in the circumstances under consideration.

The FTT considered that the taxpayer's actions were the same as those which would be expected of a person acting reasonably and diligently in the circumstances under consideration. He had relied on the advice of his professional advisers which was entirely reasonable in the circumstances. Furthermore, an offer received from the Weir Group of £72m had been the best evidence available of market value and it had been appropriate to rely on such a contemporary open market offer.

Accordingly, the FTT concluded that HMRC had not been entitled to issue a discovery assessment for the tax year 2007/08, and allowed the taxpayer's appeal.

Comment

Once the time limit for opening an enquiry has expired, or an enquiry is closed, a taxpayer's liability for the relevant tax year is generally regarded as final. In such circumstances, HMRC can only demand a further tax payment by issuing a discovery assessment pursuant to section 29 TMA, in relation to individuals, or paragraph 41, Schedule 18, Finance Act 1998, in relation to companies. It is important to remember that HMRC can only rely upon its discovery assessment powers in specific circumstances.

This case confirms that where HMRC claim that a loss of tax has been brought about by careless conduct on the part of the taxpayer, the taxpayer is entitled to rely on the fact that he sought and followed professional advice to rebut such an allegation. The fact that HMRC may not agree with that advice is irrelevant.

It is also worth noting that a few days before the hearing, HMRC made an application to the FTT for the hearing to be postponed on the ground that the enquiry for the tax year 2008/09 had not been closed and appropriate adjustments might involve adjusting the position as regards the 2007/08 tax year. This application was unsuccessful. Referring to *Portland Gas Storage Limited v HMRC*[2], the FTT confirmed that a closure notice does not need to be in a prescribed form. It found that a letter from HMRC had constituted a closure notice, as it had referred to the completion of its enquiry and set out its conclusions.

The decision can be found here.

Back to contents>

2. [2014] UKUT 270.

Grindley & Others – failure to comply with direction leads to strike out of taxpayers' appeals

In the recent case of *Grindley & Others v HMRC*[3], the FTT has directed that the taxpayers' appeals be struck out for failure to comply with a direction issued by the FTT.

Background

The taxpayers' appeals were part of a number of appeals relating to tax planning arrangements known as "Pendulum" (the Scheme). The Scheme involved the utilisation of contracts for differences and deployed a complex set of arrangements which were intended to establish a trade in derivatives in order to create a trading loss which participants in the Scheme would then be able to set-off against their general income.

HMRC issued closure notices to the taxpayers pursuant to section 28, TMA, which were appealed. The issue in the appeals was the correct characterisation of the transactions entered into and in particular, whether the transactions constituted the carrying on of trade and, if so, whether the trade was on a commercial basis with a view to realising a profit.

On 20 July 2015, HMRC applied to the FTT for directions. The application included a request for a direction that the taxpayers provide further and better particulars of their cases. HMRC contended that the further and better particulars were necessary in order to enable HMRC to understand the taxpayers' case because the grounds of appeal were inadequate. The FTT granted the application and on 18 August 2015 issued directions which included a direction that the taxpayers serve on HMRC, on or before 30 November 2015, a Reply to HMRC's Statement of Case, setting out further and better particulars.

On 27 November 2015, the taxpayers applied to the FTT for an extension of six weeks to serve their Reply, as they were in discussions with HMRC with a view to settling their appeals.

On 11 December 2015, HMRC applied for further directions, which required the taxpayers to serve their Reply by 1 February 2016. The FTT allowed this application.

At 16:35 on 1 February 2016, the taxpayers' professional representative sent an email to the FTT requesting a further extension of time to an unspecified date to enable the taxpayers to conclude their negotiations with HMRC to settle their appeals.

In a letter to the FTT dated 10 February 2016, HMRC opposed this application on the ground that the taxpayers had not had any discussions with HMRC between 27 November 2015 and 11 January 2016 and had not made any formal offer to settle their appeals. HMRC also applied for an "unless order", pursuant to Rule 8 of the Tribunal Rules, requiring the taxpayers to file their Reply within two weeks, failing which the taxpayers' appeals would be automatically struck out.

On 18 February 2016, the FTT issued directions which required the taxpayers to file and serve their Reply setting out further and better particulars of their case by 3 March 2016. The directions specified that failure by the taxpayers to comply with the directions may lead to the taxpayers' appeals being struck out.

On 3 March 2016, the taxpayers' representative wrote to the FTT informing it that it expected to be in a position to agree settlement with HMRC "within the next 4 to 6 weeks and possibly earlier".

3. [2016] UKFTT 0834 (TC).

No such settlement was reached and HMRC applied to the FTT for a direction that the taxpayers' appeals be struck out for failure to supply their Reply setting out further and better particulars of their case by 3 March 2016. The application was due to be heard by the FTT on 20 May 2016.

At 18:14 on 18 May 2016, the FTT received an email from the taxpayers' representative informing it that the person dealing with the matter had recently undergone intensive radiotherapy and was unable to attend the hearing on 20 May 2016 and an adjournment was sought. In anticipation of the FTT refusing to adjourn the hearing, the letter also contained a response to HMRC's Skeleton Argument for the hearing which had been served on 13 May 2016. The letter set out the history of the negotiations between the taxpayers and HMRC and the position of each taxpayer. The letter did not explain why the taxpayers had failed to observe the time limits for service of the Reply or engage with the FTT before the expiry of the time limit on 3 March 2016, or subsequently, until the letter of 18 May 2016.

On 19 May 2016, the FTT responded to the taxpayers' application for the hearing of HMRC's application to be postponed by stating that the application for an adjournment would have to be made at the hearing itself on 20 May 2016. At the hearing, the taxpayers' representative did not pursue the application for an adjournment.

FTT's decision

HMRC submitted that as the taxpayers had failed to comply with the direction requiring service of their Reply by 3 March 2016, their appeals should be struck out under Rule 8(3) of the Tribunal Rules. HMRC contended that *BPP Holdings Ltd v HMRC*[4] and *Denton v TH White Ltd*[5], demonstrated that the FTT should require parties to an appeal to comply with directions and rules to ensure the efficient conduct of proceedings and given the failure of the taxpayers to comply with the unless order their appeals should be struck out.

It was submitted on behalf of the taxpayers that the failure to serve their Reply on time was due, in part, to the ill-health of the person dealing with the matter. It was also anticipated that the appeals would settle and the taxpayers did not therefore wish to incur unnecessary costs.

In deciding whether to strike out the appeals, the FTT considered the three stages adopted by the Court in *Denton* in the light of the comments of the Senior President of Tribunals in *BPP*. Accordingly, the FTT considered:

1. the significance of the failure to comply
2. the reason for the failure to comply, and
3. all the circumstances of the case bearing in mind the overriding objective of the Tribunal Rules, as set out in Rule 2, to enable the FTT to deal with cases "fairly and justly".

In relation to stage 1, in the view of the FTT, the taxpayers' failure to comply with the direction to provide their Reply setting out further and better particulars of their cases by 3 March 2016, was serious and significant.

With regard to stage 2, the FTT did not consider that the taxpayers had any good reason for the failure to comply with the direction until immediately before the hearing of the application to strike out their appeals. Attempting to settle the appeals did not constitute a valid reason for non-compliance with the direction.

4. [2016] EWCA Civ 121.
5. [2014] EWCA Civ 906.

With regard to stage 3, the FTT considered that the failure to comply with the direction and provide the Reply on time disrupted the efficient conduct of the proceedings and resulted in time and resources being wasted unnecessarily and created avoidable delay. Given the seriousness of the failure, the FTT concluded that striking out the taxpayers' appeals would be proportionate and accordingly directed that the appeals be struck out.

Comment
This decision emphasises the importance of complying with the Tribunal Rules and any directions issued by the FTT. Since *Denton* and *BPP*, the previously relaxed attitude to compliance by some litigants before the FTT is unlikely to be tolerated.

The FTT emphasised that pursuing a settlement with HMRC, whilst an entirely proper course of action, does not justify failure to comply with directions. Although it will often be appropriate to stay proceedings to enable parties to discuss possible settlement, where the proceedings have not been formally stayed, it is not acceptable for one party unilaterally to treat them as if they have been stayed. Neither HMRC nor taxpayers can adopt an approach whereby they decide whether and when to comply with directions. A party wishing to negotiate a settlement is required to comply with any issued directions unless they are waived or modified.

Given the serious consequence which may flow from non-compliance with the Tribunal Rules and any directions issued by the FTT, it is important that taxpayers obtain appropriate expert advice and assistance throughout the appeal process.

The decision can be found here.

Back to contents>

Mabbutt – tribunal allows taxpayer's appeal as HMRC's notice of enquiry was invalid

The following is based on an article which was published in Tax Journal on 22 July 2016. Click here to view.

In *Mabbutt v HMRC*[6], the FTT held that HMRC had not given a valid notice of intention to enquire into the taxpayer's return because the purported notice of enquiry referred to tax year ended 6 April 2009, rather than 5 April 2009. As no valid notice of enquiry had been opened the purported closure notice was ineffective and the taxpayer's appeal was allowed.

Background
Section 114, TMA, permits HMRC and taxpayers to rely on assessments, determinations and other proceedings containing errors, provided the documents concerned are in substance and effect in conformity with the intent and meaning of the Taxes Acts. Documents will not conform with the substance and effect of legislation if the error is fundamental.

The taxpayer appealed to the FTT against a closure notice dated 1 July 2014, relating to the 2008/09 tax year (the Closure Notice). The Closure Notice assessed additional tax of £653,000 in relation to the taxpayer's participation in a DOTAS registered tax planning arrangement in that year.

HMRC purported to issue a notice of enquiry to the taxpayer on 17 January 2011, pursuant to section 9A, TMA (the Notice of Enquiry). The Notice of Enquiry stated that HMRC was opening

6. [2016] UKFTT 0306 (TC).

an enquiry "for the year ended 6 April 2009". HMRC had intended to refer to the tax year ended 5 April 2009. A letter of the same date was also sent to the taxpayer's agent.

The taxpayer appealed against the conclusions stated in the Closure Notice on the basis that no valid notice of enquiry had been given as the tax year ended 6 April 2009 did not exist and accordingly, if there was no valid enquiry, there could not be a valid closure notice.

The question for determination by the FTT, was whether the Notice of Enquiry was valid? If it was, then the taxpayer's appeal against the conclusions contained in the Closure Notice would continue on the basis of argument as to the effectiveness of the DOTAS planning arrangements. If it was not, no enquiry would have been opened and as HMRC were out of time to raise a discovery assessment, the taxpayer's tax liability for the ended 5 April 2009, would be settled on the basis of the calculations set out in his tax return for that year and the appeal would be allowed.

Taxpayer's submissions

The taxpayer argued that it was important that a taxpayer was able to understand into which return an enquiry under section 9A had been opened as important consequences flow from the opening of an enquiry. Accordingly, HMRC had to be precise with dates and section 114, which was relied upon by HMRC to validate the Notice of Enquiry, did not allow HMRC to overcome an error relating to the date as such an error was gross rather than minor. The taxpayer relied upon *Baylis v Gregory*[7], in support of his arguments.

The taxpayer also referred to *Lee and others v HMRC*[8], where it had been suggested that best practice would be to refer to the relevant return. It was argued that there must be sufficient detail to enable identification of the return in question, and that detail must be correct.

The taxpayer accepted that it was not necessary to explicitly refer to section 9A in opening an enquiry, but that the failure to refer to it hampered HMRC when they sought to apply section 114(1) because that subsection only applied to documents which purported to be sent pursuant to a provision of the Taxes Acts.

The Notice of Enquiry attempted to open an enquiry into a non-existent return. Accordingly, it could not have effect unless it was remedied by section 114, and that section was prescriptive as to the circumstances in which it applied, and as this case did not fall within those prescribed circumstances, the appeal should be allowed.

HMRC's submissions

HMRC accepted that there was an error in the Notice of Enquiry, but it argued that the error was minor in nature and did not affect its validity. HMRC referred to the surrounding correspondence, particularly correspondence with the promoter of the tax planning, which suggested that it must have been clear to the taxpayer which return was under enquiry.

In addition, HMRC argued that the taxpayer would have known which return the enquiry was into as he had only filed one tax return as at 17 January 2011 and therefore the enquiry could only have been into that return.

HMRC relied upon *Coolatinney Developments Ltd v HMRC*[9] and *Portland Gas Storage Ltd v HMRC*[10], in support of its submission that it was possible for more than one document to be taken together as the notice of enquiry, and that in the instant case there were two letters sent

7. [1989] 1 AC 398.
8. (2008) SpC 715.
9. [2011] UKFTT 252 (TC).
10. [2014] UKUT 0270 (TCC).

to the taxpayer on 17 January 2011, one addressed to the taxpayer and one addressed to his agent, and both formed the notice of enquiry. HMRC argued that the letter to the agent made it clear that the enquiry was into matters which took place in the year ended 5 April 2009, and therefore the taxpayer knew which return the enquiry was into.

FTT's decision

As HMRC relied upon section 114(1) to correct the error in the Notice of Enquiry, the burden of proof was on it to satisfy the FTT that the legislation applied.

In the view of the FTT, in order for HMRC to rely upon section 114(1), the following four requirements had to be met:

1. the subsection only applies to certain documents and the Notice of Enquiry must be within these categories
2. the Notice of Enquiry must purport to be made pursuant to a provision of the Taxes Acts
3. the Notice of Enquiry must be in substance and effect in conformity with, or according to the intent and meaning of, the Taxes Acts, and
4. the person or property charged or affected by the Notice of Enquiry must be designated therein according to common intent and understanding.

It was accepted that the Notice of Enquiry was an assessment or determination, warrant or other proceeding, for the purposes of section 114(1). The FTT then considered the remaining three requirements.

In relation to the second requirement, the FTT concluded that it was clear from the Notice of Enquiry that HMRC intended to give notice that it would open an enquiry into a return, albeit a non-existent return, for the year ended 6 April 2009. In the view of the FTT, the professing of intention was sufficient for it to conclude that the Notice of Enquiry did purport to be a notice of enquiry into a tax return and was therefore made pursuant to a provision of the Taxes Acts.

In relation to the third requirement, the FTT concluded that HMRC must be accurate in relation to the essential elements of a notice of enquiry, even if the taxpayer would be capable of discerning HMRC's true intention despite a minor error. For a notice of enquiry to meet the requirements contained in section 9A, the return into which the enquiry will be opened must be stated accurately and with sufficient detail for it to be clear which return is intended. The detail as to the relevant return must be correct.

The return which was described in the Notice of Enquiry was for a tax year which did not exist. Accordingly, the FTT concluded that the Notice of Enquiry was not in substance and effect in conformity with the intent and meaning of the Taxes Acts.

In arriving at its conclusion, the FTT relied upon the Court of Appeal's judgment in *Bayliss*, in which HMRC had issued an assessment to capital gains tax for an incorrect year. HMRC had unsuccessfully argued in that case that section 114 saved the assessment, arguing that the taxpayer must have appreciated that it was a mistake and that there was no confusion as to the year intended. The FTT also referred to an earlier decision of the FTT in *Sokoya v HMRC*[11], where it was held that section 114 could not save a penalty notice which contained the wrong deadline for compliance.

11. [2009] UKFTT 163 (TC).

With regard to the fourth requirement, the FTT considered that the person affected, the taxpayer, was designated according to common intent and understanding, as the phrase "person or property charged or intended to be charged or affected" cannot refer to anyone or thing other than the person whose return it is. The FTT did not consider that "property charged or affected" could be a reference to the tax return itself. As there was no error in the name and address of the taxpayer in the Notice of Enquiry, the taxpayer was designated in the Notice of Enquiry according to common intent and understanding.

In order for HMRC to be able to rely upon section 114 to cure the error contained in the Notice of Enquiry, it had to satisfy the FTT that all four of the requirements in section 114 were satisfied. Although the FTT was satisfied that three of those requirements were met, it did not agree that the Notice of Enquiry was in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts. HMRC's error resulted in a stated intention to enquire into a tax return for a year which did not exist and the substance and effect did not conform to the intent and meaning of the Taxes Acts. Without a valid notice of enquiry, there could be no enquiry and the Closure Notice was invalid and had no standing. Accordingly, the taxpayer's appeal was allowed.

Comment

Taxpayers are entitled to finality in their tax affairs. Section 9A requires notice of an intention to open an enquiry into a return to be given by HMRC and such a notice must be given within a certain period of time after the return in question has been filed. As the FTT made clear in its decision, it is implicit from this requirement that the notice must specify the return into which the enquiry will be opened as there is no other way in which a taxpayer receiving such a notice could know if the notice had been given within the time permitted by statute.

This case is a timely reminder that an essential element of a valid notice of enquiry is that the specific return into which the enquiry is made is accurately referred to. In the instant case, the stated return was for a non-existent tax year. The fact that the taxpayer could discern HMRC's intention despite the error is irrelevant if the notice does not refer to the correct year.

Taxpayers need to ensure that they carefully inspect any notice received from HMRC to make certain that HMRC has accurately stated the relevant tax year. The FTT has reaffirmed the need for accuracy on the part of HMRC and any such mistakes are likely to be considered fundamental and as such section 114 will not provide an escape route for HMRC.

The decision can be found here.

Back to contents>

About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 79 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol.

"... the client-centred modern City legal services business."

At RPC we put our clients and our people at the heart of what we do:

- **Best Legal Adviser status every year since 2009**
- **Best Legal Employer status every year since 2009**
- **Shortlisted for Law Firm of the Year for two consecutive years**
- **Top 30 Most Innovative Law Firms in Europe**

We have also been shortlisted and won a number of industry awards, including:

- **Winner – Law Firm of the Year – The British Legal Awards 2015**
- **Winner – Competition and Regulatory Team of the Year – The British Legal Awards 2015**
- **Winner – Law Firm of the Year – The Lawyer Awards 2014**
- **Winner – Law Firm of the Year – Halsbury Legal Awards 2014**
- **Winner – Commercial Team of the Year – The British Legal Awards 2014**
- **Winner – Competition Team of the Year – Legal Business Awards 2014**
- **Winner – Best Corporate Social Responsibility Initiative – British Insurance Awards 2014**

Areas of expertise

- Banking
- Commercial
- Commercial Litigation
- Competition
- Construction
- Corporate
- Employment
- Insurance
- Intellectual Property
- Media
- Outsourcing
- Pensions
- Private Equity
- Real Estate
- Regulatory
- Reinsurance
- Tax
- Technology

16374

Tower Bridge House
St Katharine's Way
London E1W 1AA
T +44 20 3060 6000

Temple Circus
Temple Way
Bristol BS1 6LW
T +44 20 3060 6000

11/F Three Exchange Square
8 Connaught Place
Central Hong Kong
T +852 2216 7000

12 Marina Boulevard
#38-04 Marina Bay Financial Centre Tower 3
Singapore 018982
T +65 6422 3000