

Enquiries: closed or ajar?

Mark McLaughlin looks at partial enquiry notices in the context of self-assessment tax return enquiries for individuals

Tax return enquiries by HMRC can be long and intrusive. Taxpayers may sometimes feel aggrieved that an HMRC enquiry into their tax return has become unduly protracted.

There is a facility for taxpayers to apply to the tribunal for a direction requiring HMRC to issue a final closure notice within a specified period (e.g. TMA 1970, s 28A for individuals). If the application is successful, the period specified by the tribunal for HMRC to close the enquiry can vary, generally from 30 days upwards (e.g. see *Bloomfield v Revenue and Customs* [2013] UKFTT 593 (TC)).

Closing certain areas

However, in some cases (e.g. large and/or complex enquiries) the taxpayer and/or HMRC may wish to finalise specific areas of the taxpayer's affairs, in advance of a final enquiry closure notice.

It has been possible for some time (i.e. since FA 2001) for taxpayers and HMRC to make joint applications for the tribunal to determine any questions arising in connection with the subject matter of an enquiry, at any time when the enquiry is in progress (e.g. TMA 1970, s 28ZA for individuals and partnerships). However, the requirement for a joint referral by the taxpayer and HMRC can be problematic.

When HMRC consulted on the possible introduction of partial closure notices in 2014, the intention was that this facility would only be available to HMRC. However, that proposal was criticised because it did not give taxpayers an equal opportunity. The subsequent legislation (introduced in F(No 2)A 2017)) provides for HMRC (and taxpayers, upon a successful application to the tribunal) to close specific areas of an ongoing enquiry through a partial closure notice.

Inside the scope...

The first cases regarding partial closure notices soon reached the First-tier Tribunal. In *Embiricos v Revenue and Customs* [2019] UKFTT 236 (TC), the appellant (who was originally from Greece) lived in the UK for many years before moving to Monaco in March 2017. He considered himself to be non-UK domiciled and claimed the remittance basis of taxation. HMRC opened enquiries into the appellant's tax returns for 2014/15 and 2015/16 in relation to his claim to be non-UK domiciled.

HMRC concluded that the appellant was domiciled in the UK during the relevant tax years and sought to quantify the tax that would be due if they were correct about the appellant's domicile status. HMRC issued an information notice requiring the appellant to provide information to enable them to calculate the tax. The appellant applied to the tribunal for a direction requiring HMRC to issue a partial closure notice.

The tribunal concluded that a partial closure notice did not, in order to be valid, have to amend the taxpayer's self-assessment. On that basis, HMRC had not shown reasonable grounds as to why the tribunal should not direct HMRC to issue a partial closure notice. The tribunal therefore directed HMRC to issue a partial closure notice stating their conclusion in

respect of the appellant's domicile and amending his tax return to withdraw the remittance basis claim within 30 days of its decision.

...or outside?

Subsequently, in *Executors of Mrs R W Levy v Revenue & Customs* [2019] UKFTT 418 (TC), the deceased (RWL) was a US citizen until her death on 19 August 2018. She had a residence in London from 1973 until her death. Her tax returns for 2014/15 and 2015/16 stated that she was resident in the UK and included a claim for the remittance basis. HMRC opened an enquiry into the returns and informed RWL that it intended checking her domicile status.

HMRC issued a series of information notices requiring details relating to the possibility that RWL had acquired a UK domicile. RWL's advisers applied for a closure notice. HMRC subsequently reached the view that RWL had acquired a domicile of choice in the UK.

HMRC requested the provision of income and gains figures for RWL and subsequently issued an information notice, seeking details of RWL's worldwide income and gains for the relevant tax years. The applicant appealed and applied for the tribunal to direct that a partial closure notice be issued in respect of RWL's domicile status.

The tribunal noted the above decision in *Embiricos* in the appellant's favour on the principle of the availability of the power for HMRC to issue a partial closure notice. However, the tribunal came to the opposite conclusion; it considered that HMRC did not have the power to issue a partial closure notice in respect of RWL's domicile without specifying the increased amount of tax.

Where are we now?

The First-tier Tribunal's decision in *Levy* is contrary to the decision in *Embiricos*. A possible reason is that although the provision of the relevant information in *Embiricos* was said to be difficult, expensive and time-consuming, it was agreed in *Levy* that the information could be provided within 14 days of being required to do so.

HMRC would probably prefer that taxpayers did not have the statutory right to apply for partial closure notices in HMRC enquiries, but they do. Despite the opposing decisions in *Embiricos* and *Levy* (which do not create a binding precedent either way), consideration should be given to using this power with a view to closing down particular areas of ongoing HMRC enquiries, where appropriate.

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