



TC06237

Appeal number: TC/2017/04098

CORPORATION TAX – application for ‘closure’ notices – para 33 of Schedule 18 to FA 1998 – whether there was a valid enquiry notice under para 24 of Schedule 18 to FA 1998; no – Tribunal has no jurisdiction to exercise – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MEROU PAPA LTD

Applicant

- and -

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

Respondents

**TRIBUNAL: JUDGE HEIDI POON
MR IAN MALCOLM**

**Sitting in public at the Tribunals Centre, Eagle Building, 215 Bothwell Street,
Glasgow on 30 October 2017**

No attendance or representation for the Appellant

**Iona Stevenson, presenting officer of HM Revenue and Customs, for the
Respondents**

DECISION

Introduction

1. This is an application by Mrs Pamela Randall, a director of the applicant company (Merou Papa Ltd), under para 33 of Sch 18 to the Finance Act 1998 (“FA 1998”) for a direction by the Tribunal that a closure notice or notices be issued in respect of the enquiries into the company’s tax affairs.

2. HMRC resisted the application, and have referred to the closure application as brought under s 28A(4) of the Taxes Management Act 1970 (“TMA”).

3. A closure notice under s 28A(4) TMA is applicable to an enquiry brought under s 9A of TMA for an individual’s tax affairs. Since the applicant in this application is a company, and the enquiry (if there was one opened), would have been under para 24 of Sch 18 to FA 1998. The equivalent provision to s 28A(4) TMA is para 33(1) of Sch 18 to FA 1998 in an enquiry into a company’s returns. For this reason, this decision refers to the Tribunal’s jurisdiction under para 33 of Sch 18 to FA 1998.

Non-attendance of the appellant

4. On 26 October 2017, the tribunal office contacted the representative for Merou Papa, Mr John Jackson of Jackson Moughal LLP by email for the names of the persons who would be appearing for the applicant.

5. Mr Jackson would seem to have forwarded the email to Mrs Randall, who replied to the Tribunal on the same day as follows:

“... I was the former director of Merou Papa Limited. This hearing will not be attended by anyone but think that it should be disbanded as the company has never traded, has no assets and now no bank accounts and only acted as an agent for another company therefore having no income.

The company also is in the process of being struck off the register and therefore I feel that this is a waste of court tribunal time in even hearing this matter.

Please therefore abandon this hearing.”

6. On 28 October 2017, Mr Jackson wrote to the Tribunal in response to the email too, and his reply was as follows:

“Regrettably I have been given no instruction other than not to attend the tax appeal given the fact that the company in question is at the point of being struck off.

My client has forwarded you an email setting out the current position of the company to which I cannot add.

Given the circumstances I shall resign as agent.”

7. There was no attendance or representation for the applicant therefore, even though the hearing was set down for the sole purpose of considering Mrs Randall's application on behalf of Merou Papa Ltd.

5 8. By requesting the hearing to be abandoned, Mrs Randall's reply could have
been construed as a withdrawal of the application. However, we do not attempt to
adduce any procedural significance of the reply other than to state that we are satisfied
that the applicant had been notified of the hearing. Mrs Randall's reply had, in effect,
given notice for the hearing to proceed in the applicant's absence, and we considered
10 that it is in the interests of justice to proceed in the applicant's absence under Rule 33
of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

Factual background

9. By letter dated 22 March 2017, HMRC wrote to Mrs Reilly, who (according to Miss Stevenson) might have been the Company Secretary at the time.

10. The opening paragraphs of the letter are as follows:

15 "Please take this letter as notice of my intention to enquire into your
tax returns under Paragraph 24(1), Schedule 18 of the Finance Act
1998.

20 My enquiries will be conducted under our Code of Practice 8, a copy
of which is attached for your attention. Please ensure you read this
document carefully and contact me on the number above if you have
any questions.

My enquiry will look into the whole tax position of the company. I
currently hold information which suggests that the company's tax
returns may be incorrect."

25 11. The letter was accompanied by a Schedule of information and documents
request, but the request was not served under Schedule 36 of FA 2008. The items
requested are as follows:

- (1) A breakdown of all commercial activities undertaken by the company since incorporation.
- 30 (2) All invoices and other paperwork relating to the above commercial activities.
- (3) A listing of all bank and building society accounts held by the company since incorporation.
- (4) Copies of bank or building society statements for the above since
35 incorporation.
- (5) A list of all properties currently or previously held by the company.
- (6) Purchase and sale documentation, to include payment and receipt paperwork, for all the above properties.

12. The exact date of incorporation of Merou Papa is not evidenced in the bundle. However, the grant of planning permission by Braintree District Council to Merou Papa in relation to the site at The Cangle Star Stile Greenstead Green Halstead Essex dated 5 September 1996 would suggest that the company was incorporated by 1996.

5 13. Apart from the Code of Practice 8 (“COP 8”), references were made to the factsheet CC/FS13 in respect of the publication of details of deliberate tax defaulters. The literature relevant to the COP 8 procedure was enclosed with the letter, while factsheet CC/FS13 was not, but it was stated as accessible on HMRC’s website.

10 14. A copy of the letter of 22 March 2017 was also sent to the appellant’s agent, R & R Accounting and Taxation Services Ltd (“R&R”).

15 15. On 21 April 2017, R&R responded to the information request. The reply was short and the information provided was sparse, and it can be quoted in full:

“You have already asked various questions in relation Merou Papa Limited in the investigation into Mrs Randall’s affairs. As this is now 1st stage Tribunal for closure, this company could be included within this. However we will answer your queries as follows: -

1. The company does not trade at all as it only acts as a banking agent for a Marshall Islands company and does no other activity.

2. There is no paperwork accordingly.

3. The company only has one bank account but this is acting as an agent and therefore it is not to do with the company itself but for the company in the Marshall Islands.

4. Not applicable.

5. None as holds nothing in the name of this company.

6. Not applicable.”

16. On 5 May 2017, HMRC wrote to Mrs Reilly in respect of a proposed notice of information request to be served on a third party.

17. On 17 May 2017, Mrs Randall made an application to the Tribunal to close the enquiry on the standard form T245 for Closure Application.

30 **The grounds for the application**

18. Of relevance to our consideration are the following details stated in the application form for the closing of enquiry:

(1) *Taxpayer’s details* are given as both “Merou Papa Limited” and “Pamela Randall”.

(2) *The years or accounts of Returns under enquiry* is stated as “2008-2015”.

(3) *Date of Decision(s)* is stated as “No decision”.

(4) Under *Period within which the issue of a closure notice is sought* –
“We wish closure as the tax inspector is seeking to find information
not about this company but about a Marshall Islands company and has
connected this wil [sic] Mrs. Randall who is already under 1st Stage
Tribunal for closure.”

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19. The documents enclosed with the application are:

(1) The letter of 5 May 2017 from Officer Hall regarding the proposed
information notice to a third party.

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(2) A completed authority signed and dated 17 May 2017 by Mrs Randall
to instruct Jackson Moughal LLP as the applicant’s representative.

(3) A letter dated 17 May 2017 by Mrs Randall as supplemental to the
application. The letter states the following:

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“Please be aware that I have applied for closure on this company as Mr
Russell Hall is trying to acquire third party information in relation to
this company and attach it to myself, Pamela Randall.

This company has always been Marshall Island [sic] registered and the
ownership is under a non-UK resident trust which was set up on 14th
February 1990 and therefore it is felt that not only is he wasting tax
payers [sic] money wasting the tribunal’s time.”

20 **HMRC’s submissions**

20. Ms Stevenson submits that the two issues for the Tribunal to consider are:

(1) A preliminary point at issue is whether the letter of 22 March 2017 is a
valid enquiry opening notice.

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(2) The substantive point at issue is whether the Tribunal should issue a
Direction requiring HMRC to issue a closure notice for the COP 8
investigation into Merou Papa Ltd.

21. In respect of the first issue, HMRC aver that in order for the Tribunal to direct
HMRC to issue a closure notice, there must be a valid open enquiry into a return or
returns. HMRC consider that the letter of 22 March 2017 is insufficient to constitute a
valid opening enquiry notice; hence the Tribunal has no jurisdiction to direct HMRC
to issue a closure notice.

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22. If the Tribunal is minded to view the letter of 22 March 2017 as a valid notice to
open an enquiry, then HMRC resist the closure application on the following grounds:

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(1) The agent’s reply by letter of 21 April 2017 indicated that Merou Papa
Ltd did not hold any property. From the records held by the Land Registry,
HMRC note that Merou Papa held property and has been a party to
property transactions in the period since incorporation.

(2) HMRC have applied to Tribunal for permission to issue a third-party
information notice to corroborate the information from the Land Registry

in order to assess and quantify the tax implications from the income arising from the properties.

(3) Until the information requested in the Notice is received, HMRC are unable to arrive at an accurate quantum of assessment and will not have an accurate picture of any business operation of the applicant company.

Relevant legislation

23. The relevant provision for the opening of an enquiry into Mero Papa as a company comes under para 24 of Sch 18 to the Finance Act 1998 (“FA 1998”), and sub-para 24(1) states:

“Part IV – Enquiry into Company Tax Return

Notice of Enquiry

24(1) An officer of Revenue and Customs may enquire into a company tax return if the officer gives notice to the company of the officer’s intention to do so (“Notice of enquiry”) within the time allowed.

(2) If the return was delivered on or before the filing date, notice of enquiry may be given at any time up to twelve months from the day on which the return was delivered [...].”

24. HMRC have included in the hearing bundle the provisions under s 28A of TMA. However, as related in the introduction, the equivalent provision for the purposes of this application is under para 33 of Sch 18 to FA 1998, which states:

“ *Direction to complete enquiry*

33(1) The company may apply to the tribunal for a direction that an officer of Revenue and Customs gives a closure notice within a specified period.

(2) Any such application is to be subject to the relevant provisions of Part 5 of the Taxes Management Act 1970 (see, in particular, section 48(2)(b) of that Act).

(3) The tribunal shall give a direction unless satisfied that an officer of Revenue and Customs has reasonable grounds for not giving a closure notice within a specified period.”

25. Part 5 of TMA provides for “Appeals and Other Proceedings” and under s 48(2)(b), it is stated:

“(2) In the case of –

(a) [...]

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

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

(ii) but shall, in that application, have effect subject to any necessary modifications, [...].”

Discussion

Tribunal's jurisdiction under para 33 of Sch 18 to FA 1998

26. The Tribunal's jurisdiction provided under para 33 of Sch 18 to FA 1998 is inextricably linked to the existence of an enquiry being opened under para 24 of Sch 18 to FA 1998: a closure notice is specific to an enquiry that is ongoing.

27. In other words, if the Tribunal finds that there was no effective notice served on Merou Papa to open an enquiry under para 24(1) of Sch 18 to FA 1998, then the Tribunal has no jurisdiction to consider the application, let alone to direct the issue of a closure notice in accordance with the provision under para 33 of Sch 18.

28. The preliminary issue for our determination is therefore whether there was an enquiry opened under para 24 of Sch 18 to FA 1998 into Merou Papa, and the enquiry is still ongoing.

Decision on a s 9A enquiry notice applicable by analogy

29. The Tribunal was referred to the decision by Dr David Williams, the Special Commissioner in *Lee v R & C Commrs* [2008] Sp C 715 ("*Lee*"). The decision relates to three linked sets of applications for closure notices brought by Mrs Lee, her husband, and a company of which Mrs Lee was said to be the only shareholder. Dr Williams' decision focuses on a s 9A TMA notice for an enquiry into an individual's self-assessment, but his reasoning is applicable by analogy to a notice under para 24 of Sch 18 for an enquiry into a company's tax returns.

30. The parameters for opening an enquiry under s 9A of TMA are set out at [3] of *Lee* as follows:

"An officer wishing to conduct an enquiry into a self-assessment tax return must give notice to the taxpayer that he or she intends to do this. He or she can give notice only within a 'window' of time allowed by section 9A(2) TMA. There are no preconditions that the Officer must meet when deciding to make an enquiry. But it must be an enquiry into a return. Notice cannot be given before a return is made. And it must be given within the time allowed. Once the 'window' has passed, an Officer may investigate a taxpayer's affairs only by using other powers such as those in section 29 TMA."

31. While the legislation requires that a s 9A notice must be in writing to the taxpayer, no set form is provided in law for a s 9A notice. Dr Williams continues at [4] to set out his views on what other formality requirements are necessary for there to be an effective service of a s 9A notice:

"In my judgment section 9A(1) requires that the notice indicate clearly that the Officer is giving notice of his or her 'intention to' 'enquire into' one or more returns. No precise words have to be used, but that intention must be clear. While it may be best practice always to refer specifically to section 9A (or the corporation tax equivalent) and to the specific return to be the subject of enquiry, that is not necessary in law."

5 But entirely general language in a letter may not be adequate notice engaging section 9A. In particular, an indication of relevant dates is needed because section 9A(2) provides a specific ‘window’ with regard to any return. The section expressly provides for a limited time in which an enquiry may be started. And it does not empower a general investigation into a taxpayer’s affairs. The consequence to HMRC, if proper language is not used in a section 9A notice, is that HMRC may later have to establish that the far stricter requirements of section 29 TMA are met.” (sub-paragraph division added)

10 *Whether HMRC’s letter of 22 March 2017 effective as a “Notice of enquiry”*

32. Paragraph 24(1) of Sch 18 to FA 1998 states: *An officer of Revenue and Customs may enquire into a company tax return if the officer gives notice to the company of the officer’s intention to do so (“Notice of enquiry”) within the time allowed.* In short, the parameters set out in sub-para 24(1) pertain to: (a) the giving of
15 notice to the company, (b) the stating of the officer’s intention to open an enquiry, and (c) the notice is served within the time allowed.

33. The first parameter, that of the giving of notice to the company in writing, is established by the serving of the letter by HMRC’s Officer Hall dated 22 March 2017.

34. The second parameter, that of the stating of the officer’s intention is established
20 by the opening paragraph to the letter, which reads: “Please take this letter as notice of my intention to enquire into your tax returns under Paragraph 24(1), Schedule 18 of the Finance Act 1998.”

35. The third parameter, that of “within the time allowed” cannot be established. The reference to “within the time allowed” is a reference to the enquiry window of 12
25 months beginning with the day on which the return was delivered, as provided by sub-para 24(2) of Sch 18. The letter of March 2017 makes no reference at all as to which company return(s) fall within the enquiry window for a para 24 enquiry to apply.

36. The letter of 22 March 2017 was accompanied by the Schedule of information and documents (detailed at §12), with some items of request being for the production
30 of information and documents since incorporation. As inferred from the grant of planning permission to Merou Papa dated 5 September 1996, the items requested would cover a period of more than 20 years since its incorporation.

37. An enquiry to be opened under para 24 of Sch 18 FA 1998 has to be brought within 12 months of the filing date of the return under enquiry. The information
35 requests related to an enquiry under para 24 Sch 18 are restricted to the period of enquiry, usually the accounting period to which the company return relates. The Schedule of information requests accompanying the letter of 22 March 2017 is in relation to information and documents for a time period of some 20 years. The time frame is outwith a normal accounting period covered by a company self-assessment
40 return for a para 24 enquiry.

38. For these reasons, we find that the third parameter pertaining to “within the time allowed” cannot be established by the letter of 22 March 2017. While Officer Hall has stated his intention to open a para 24 enquiry, that is not sufficient to render the letter of 22 March 2017 an effective Notice of enquiry for the purposes of para 24 of Sch 18 FA 1998. We find as a fact that there is no notice of enquiry served under para 24 of Sch 18; it follows that no para 24 enquiry has yet been opened.

Tribunal has no jurisdiction to direct a closure notice

39. Given our finding of fact that there was no enquiry opened under para 24 of Sch 18, there is no ongoing enquiry to which the closure application is relevant. Where there is no ongoing enquiry under para 24 Sch 18, the Tribunal has no jurisdiction to exercise in respect of the closure notice application.

40. For the avoidance of doubt, our finding of fact that no enquiry has yet been opened under para 24 of Sch 18 means that HMRC can still open such an enquiry at a later stage by giving written notice to establish the third parameter; that is, to state the years of company returns that are covered, so long as the enquiry is brought within the 12-month window in line with the definition for “within the time allowed”.

41. Furthermore, HMRC are empowered to investigate into the company’s records since incorporation under s 29 of TMA for “Assessment where loss of tax discovered”, commonly referred to as the “discovery assessment” regime.

Addressing the grounds of application

42. Even if there had been an ongoing enquiry for the Tribunal to exercise our jurisdiction in respect of the closure application, Mrs Randall’s grounds of application are all misconceived.

43. First, it is of no legal significance that Merou Papa is in the process of being wound up. The company was or has been within the UK tax jurisdiction and HMRC are empowered to enquire into the returns the company has submitted in respect of its tax affairs up to the very last return for which the company has an obligation to file. The future course of the company does not erase the records of the previous returns filed by the company. In other words, the imminent dissolution of Merou Papa has no implications on any enquiry that may still be brought into the company’s tax returns that have been filed since its incorporation.

44. Secondly, even if Merou Papa had acted only as an agent for a company resident in Marshall Islands (as R&R stated), the agency activities of Merou Papa were nevertheless the business activities of Merou Papa in its own right. These business activities are subject to the UK tax jurisdiction, of which HMRC have been entrusted with the executive powers to establish the correct tax liabilities payable by the company. Where HMRC have reasons to believe that there had been a loss of tax from the business activities of the company as a result of deliberate conduct, to enquire into Merou Papa’s business activities in the past 20 years is firmly within the ambit of HMRC’s investigatory powers.

45. Thirdly, the few Land Registry records included in the bundle consistently show the residence of Merou Papa as in the UK. Mrs Randall's application letter sought to assert that: "This company has always been Marshall Island [sic] registered" and that "the ownership is under a non-UK resident trust". In the first instance, this assertion would seem to contradict the Land Registry records, and even the very brief reply of R&R which stated Merou Papa as the banking *agent* of this Marshall Islands registered entity. We can put no weight on any assertion for which we have not been given evidence. Not only are these unproven assertions of fact, there is evidence to prove the contrary that the company has been UK resident.

46. Fourthly, the legal personality of the company is distinct from its directors. The course of enquiry into Mrs Randall's own tax affairs has no direct implications on the course of enquiry into Merou Papa's tax affairs. The course of the enquiry of the company is separate and distinct from that of Mrs Randall's. Even if the enquiry into Mrs Randall's tax affairs is closing, it does not prevent an enquiry into Merou Papa from opening.

47. Finally, it is unclear to the Tribunal what Mrs Randall thought she could achieve by lodging a closure application at this stage, when the enquiry clearly has not even got off the ground. The timing of the closure application was prompted by HMRC's proposal to serve third-party information notices.

48. If Mrs Randall applied for closure as a means to prevent the service of third-party information notices, it is vain hope that the Tribunal will direct any closure at this stage. From the limited evidence provided to us of the Land Registry records, and the sparse information provided by R&R as agent to the company, HMRC have every good reason to propose, and to apply to the Tribunal if necessary, for third-party notices to gather information which has not been forthcoming from the applicant.

Conclusion

49. For the reasons stated, the application is refused.

50. 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: 23 NOVEMBER 2017