TC07892

Taxation of Lloyd's syndicates – Lloyd's Underwriters (Double Taxation Relief) Regulations 1997 - relief for US tax – whether provision for different treatment unlawful – no – whether notice to file tax return invalid – no – application of section 103 Finance Act 2020 - whether notice of enquiry invalid – no- whether closure notice invalid – no – application of section 12D Taxes Management Act 1970

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/2850

BETWEEN

WYATT PAUL **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE IAN HYDE

The Tribunal determined the appeal on 30 September to 2 October 2020 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held because the issues were of a technical nature and the parties consented. The documents to which I was referred are the hearing bundles produced by both parties as summarised in the decision.

DECISION

INTRODUCTION

1. This appeal concerns the availability and timing of US tax relief to Lloyds underwriters and specifically the timing of such credit under the Lloyd's Underwriters (Double Taxation Relief) Regulations 1997 ("the 1997 Regulations"). The appellant's case is that the 1997 Regulations as they apply to US tax are *ultra vires* the enabling legislation.

2. This appeal also concerns whether the enquiry process was invalid because of a number of failures by HMRC to comply with the Taxes Management Act 1970 ("TMA").

3. This appeal is being determined on the papers as directed by the Tribunal and as agreed by the parties pursuant to Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules").

4. Written submissions were made by Sade Ajose of HMRC and by Keith Gordon, counsel, on behalf of the appellant, with a reply by Mr Gordon. The bundles produced to me ran to 711 pages from HMRC and an additional 211 pages from the appellant with some 26 pages of supplemental unpaginated pages.

5. Relevant legislation and regulations are set out in the Appendix 2 to this decision.

PROCEDURAL OBJECTION

6. The appellant has made a complaint about HMRC's conduct of the appeal in that HMRC made unilateral applications to the Tribunal without canvassing the appellant's views. Specifically;

   (1) the appellant complains that HMRC left it until 29 July 2020 to notify the appellant that they could not find copies of documents relied on by the appellant, notwithstanding that HMRC had the list of the appellant's documents nearly two years before. Failure to produce a completed and paginated bundle prevented the appellant from producing a cross referenced skeleton argument

   (2) HMRC were late with their submissions causing delays over a bank holiday weekend in sending them to appellant's counsel

   (3) HMRC included without warning a supplemental witness statement from Ms Wilson to address a ground of appeal first identified with HMRC on 3 January 2019.

7. The appellant has made an application that the supplemental witness statement and exhibits be excluded.

8. HMRC resisted the application on the grounds that it was merely required to copy in the appellant into applications. Due to the coronavirus pandemic and working remotely HMRC has experienced practical difficulties but of a bundle of some 600 pages HMRC were only able to locate 8 pages, which in dialogue with the appellant HMRC established were not material.

9. I take the supplemental witness statement to be that of Ms Wilton of 26 August 2020. The supplemental witness statement is helpful in clarifying factual matters and I note that the appellant also submitted a supplementary statement in August 2020, albeit with no exhibits. The appellant's counsel has been able to submit a 27 page reply following the service of the supplemental statement. and has not been able to point to any substantive disadvantage.

10. The overriding objective if the Tribunal under Rule 2 of the Tribunal Rules is to deal with cases "fairly and justly";

> "2(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes-
>
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
>
> (d) using any special expertise of the Tribunal effectively; and
>
> (e) avoiding delay, so far as compatible with proper consideration of the issues.
>
> (3)..."

11. I also note that Rule 2(2)(b) requires the Tribunal to avoid unnecessary formality and at (c) ensure, so far as practicable, that the parties can participate fully in the proceedings. As I can identify no material prejudice to the appellant, I determine that it is not appropriate to exclude the additional evidence and I reject the appellant's application.

THE FACTS

12. The facts relevant to this appeal, save as to the address of the appellant which is discussed below, are agreed. Witness statements were provided by the appellant and Ms Alison Wilton, an HMRC officer. I accept their evidence, save where it blurred the line and took the form of submissions.

13. I accordingly find the facts in this appeal as set out below.

The taxation of Lloyd's underwriting

14. Ms Wilton gave evidence as to the nature and history of the taxation of Lloyd's underwriters to which the appellant made no objection and I accept as useful background to the substantive issues in this appeal.

15. If an individual wishes to participate in the Lloyd's insurance market he or she does so through syndicates through which they commit a pre-defined amount of capital or "capacity" to underwrite the risks being insured by the syndicate. Syndicate members or "names" must delegate all management to the managing agent of the syndicate and the agent employs a professional underwriter who undertakes insurance business on behalf of the syndicate.

16. Underwriting works on a calendar year basis with each year being known as a year of account or "YoA". Each YoA is open for three years, during which period claims are normally made. At the end of the three years claims that have not been settled are normally reinsured into the next YoA so that the profit and loss for the original YoA can be calculated and declared in the May following the end of the three year period, as set out on the table at Appendix 1.

17. Syndicates are transparent for UK tax purposes with profits and losses allocated in accordance with capital contributions. Underwriters are taxed on the profit or loss declared for a YoA in the tax year in which the declaration is made ("the Declarations Basis").

18. A non-resident underwriter is deemed to have a UK permanent establishment and so the participant is taxable in the UK on the underwriting trade but any foreign tax payable is relievable under the relevant double tax treaty.

19. In the United States of America the syndicate is not tax transparent and the US taxes the ongoing business on a calendar year basis. Each calendar year taxed in the US will therefore reflect the business derived from the three 3 YoAs that have not been closed and so are "live" during that year.

20. There are difficulties in calculating the amount of foreign tax that should be available to set off against UK tax on the same income. The position is more difficult under the very different rules applied by the US and Canadian tax authorities for allocating income and expenditure to tax years.

21. The Internal Revenue Service in the US and Lloyd's negotiates a "closing agreement" in respect of each syndicate for each US tax year and Lloyd's pays the IRS the resulting US tax due on behalf of underwriters which is recovered from underwriters through the managing agents.

22. Each year Lloyd's provides the underwriter with the figures to be included in the relevant boxes in their tax return on a form CTA1 (Consolidated Tax Advice).

23. In 1985 prior to the advent of self-assessment, HMRC agreed with Lloyd's a method for allocating US tax credits which was a simplification of prior practices ("the Simplified Basis"). Under the Simplified Basis, which as communicated by Lloyd's to members in a circular dated 30 August 1985, US tax paid in a calendar year would be allocated to the equivalent UK year of assessment. For example US tax paid in calendar year 1984 would be allocated to the 1983-84 UK tax year, being the 1983 YoA. As the YoA was taxed in the UK in the year following the closure of the three year period, the 1983 YoA would be taxed in 1986-87 and against which was claimed the tax relief for US tax paid for the calendar year 1984.

The current regime and the 1997 Regulations

24. The Simplified Basis was an informal arrangement and so to enable taxpayers to apply the method on the introduction of self assessment there was a need to put it on a statutory basis.

25. The 1997 Regulations were therefore introduced under the power granted by Section 182(1) Finance Act 1993;

> "182(1) The Board may by regulations provide–
>
> (a) …
>
> (d) for giving credit for foreign tax."

26. The 1997 Regulations provided a mechanism for providing relief for foreign tax credits to Lloyd's underwriters which modified the general rules which would otherwise apply and is worth summarising by way of an introduction to the issues in this appeal.

27. Under Regulation 3 all foreign tax paid in respect of profits and losses taken into account in taxing in the UK a Lloyd's underwriter's business are to be treated as a single payment of tax in respect of a single source of income. In effect all foreign taxes were pooled as a single foreign tax credit.

28. Under Regulation 4, other than foreign tax to which Regulation 6 or 7 applies, the tax relief arising under regulation 3 is to be allocated to the same year of assessment as the year

of assessment to which the relevant profits or losses of the underwriting business are allocated.

29. Regulation 6 provides that to the extent the foreign tax relief represents US tax, then the credit is to be allocated to the pool for the year of assessment next but one following the year of assessment to which the underwriting year for which the return is made corresponds.

30. Regulation 7 makes similar specific provision for the timing of relief for Canadian tax credits.

31. The difference between Regulation 4 and Regulation 6 is best illustrated by an example:

(1) Foreign tax paid in calendar year 2008 would be allocated to the 2008-09 pool and relieved against the 2005 YoA declared in May 2008 and taxed in the 2008-09 return

(2) However, US tax paid in calendar year 2008 would be allocated to the 2010-11 pool and relieved against the 2007 YoA declared in May 2010 and taxed in the 2010-11 return

32. The explanation provided by HMRC in their internal manual at LLM7050 for the deferral of relief for US and Canadian foreign taxes was that:

> "the tax is attributed to the account which contributes the largest element of the US measure of profits"

33. Correspondence obtained by the appellant under the FoI request shows that HMRC recognised immediately before the implementation of the Regulations that that the method of providing relief for US tax paid by underwriters was extremely complex and it was difficult to provide accurate relief. For example in one internal memorandum in November 1996 it was noted:

> "…. the closest approximation to the root income principle that is practicable (and certainly the only way of making [Self Assessment] work) is to continue the existing practice of giving credit for US tax e.g. 1993 against the UK tax charged in respect of the year in which the 1992 account result is taxed. This may lead to relief being given it earlier or later years than strictly should. It may also lead to some credit relief being lost or too much being given in particular cases. But it is swings and roundabouts as far as the UK Exchequer is concerned…."

34. The draft regulations were discussed in a meeting between HMRC and Lloyd's on 20 February 1997 and they agreed that Regulations 6 and 7 matched existing practice.

The appellant's tax position

35. The appellant is an individual resident in the Isle of Man since 2008.

36. The appellant was a Lloyds' underwriter in the periods 1978 to 1983 and 1988 to 2010.

37. Towards the end of his period as an underwriter the appellant's syndicates suffered very significant losses. However, because of the combined effect of his personal circumstances and the operation of Regulation 6 of the 1997 Regulations, he could not get double tax relief for the considerable taxes paid in the US on previous years' profits and, according to the appellant, there was no prospect that he would do so unless the 1997 Regulations applied without Regulation 6.

38. On 6 April 2009 a notice in respect a prior tax year was sent to the appellant at the Isle of Man Address.

39. On 1 March 2010 Diane Berry, an officer of HMRC wrote to the appellant in Comaa, Isle of Man ("the Isle of Man Address") introducing herself as the appellant's customer relationship officer.

40. On 6 April 2010 (subject to the appellant's arguments as to validity considered below), HMRC sent a notice to file tax returns in respect of the 2009-10 tax year to the appellant at address in Woodsford, Dorchester ("the Dorset Address"). The notice was not issued in the undewriter of an officer. The Dorset Address is the address of Woodsford Farms, a partnership, and Woodsford Limited, a company of which the appellant is a director.

41. On 29 November 2010 the appellant's agent wrote to HMRC seeking a concessionary treatment on the basis that the application of Regulation 6 was unfair to the appellant. The appellant's agent had carried out an analysis of the US income to provide a breakdown of the US tax paid in 2008. The agent concluded that the majority of the US income arose in the 2006 account not the 2007 account and so was paid in 2007, a year earlier than would have been deemed under the 1997 Regulations.

42. In his tax return for 2009-10 received by HMRC, the appellant, applying the concessionary treatment he had sought apportioning US tax by reference to the amounts of US income for each year, entered in box 44 of his tax return credit for US tax paid of £160,876, subsequently corrected by the appellant's agent to £160,496. The relevant CTA1 showed the US tax paid in 2007 – the corresponding year for the purposes of Regulation 6 - as £383.

43. On 6 April 2011 (subject to the appellant's arguments as to validity considered below), HMRC sent a notice to file tax returns in respect of the 2010-11 tax year to the appellant at the Dorset Address and in the same form as the 6 April 2010 notice.

44. On 27 June 2011 HMRC;

(1) issued a notice of enquiry under section 9A TMA to the appellant at the Dorset Address in respect of the 2009/10 return

(2) wrote to the appellant's agent enclosing the notice of enquiry and advising of their "intention to enquire into your clients Tax Return for the year ended 5 April 2010 under section 9A Taxes Management Act 1970" in respect of the foreign tax of £163,067.65 claimed in the return and other matters

45. On 23 November 2011, HMRC wrote to the appellant's agent and suggested that, as HMRC were unable to provide an answer to the appellant's proposals for a concessionary treatment, suggested the appellant submit his 2010-11 tax return on time and in accordance with the appellant's proposed concessionary treatment but on a provisional basis.

46. In his tax return for 2010-11 the appellant, again applying the claimed concessionary treatment, entered in box 44 of his tax return credit for US tax paid of £47,943. The relevant CTA1 showed the US tax paid in 2008 – the corresponding US tax year for the purposes of Regulation 6 - as £208,433.

47. On 20 December 2012 HMRC issued a notice of enquiry under section 9A TMA to the appellant at the Isle of Man Address in respect of the 2010/11 return. A copy was sent to the appellant's agent with an identical covering letter as sent in respect of the 2009 –10 enquiry.

48. On 26 February 2018 HMRC closed the enquiries pursuant to section 28A TMA on the basis that Regulation 6 of the 1997 Regulations applied so that:

(1) The tax liability in respect of 2009-10 increased by £160,489.22 due to a denial of foreign tax credit; and

(2) The tax liability in respect of 20010-11 decreased by £53,807.53 due to additional foreign tax credit being available but taking into account consequential adjustments.

49. On 14 March 2018 the appellant appealed against the closure notices.

50. On 19 March 2018 the appellant's agent made a Freedom of Information Act ("FoI") request relating to papers including legal advice and correspondence with the House of Commons leading to the laying before Parliament of the 1997 Regulations.

51. On 9 April 2018 HMRC issued their view of the matter letters confirming the position set out in the closure notices.

52. On 28 April 2018 the appellant appealed to the Tribunal.

The issues in this appeal

53. Prior to this hearing the appellant abandoned one argument as to whether the US UK Double Tax treaty overrode the 1997 Regulations before this appeal and so the issues in this appeal fall into two categories;

(1) Whether, on a number of specific grounds put forward by the appellant, the enquiry process was defective because of procedural failures by HMRC to comply with the Taxes Management Act 1970 ("TMA") ("the Enquiry Arguments");

(2) The substantive argument as to whether Regulation 6 of the 1997 Regulations is ultra vires the enabling legislation in section 182 Finance Act 1993 and so of no effect ("the Substantive Arguments").

54. I have not considered the arithmetical differences between the amounts that appear in the papers and submissions made by the parties on the basis that they do not concern the issues in this appeal.

THE ENQUIRY ARGUMENTS

55. The appellant argues that the enquiry process was invalid because of a number of procedural failures by HMRC to comply with the TMA, being:

(1) Argument 1: the notices under section 8 TMA requiring the submission of a tax return were not sent by an officer or by HMRC

(2) Argument 2: the notices were not sent to the taxpayer's last known address in accordance with section 115(2) TMA

(3) Argument 3: if the appellant succeeds in argument 1 or 2 then any tax return made were submitted voluntarily and therefore incapable of being subject to an enquiry under Section 9A TMA

(4) Argument 4: as regards the 2009-10 tax year, the purported enquiry notice was sent to the wrong address

Enquiry Argument 1: The section 8 notice was not sent by an officer

56. This issue is one of the two preliminary points that the appellant must establish to be able to argue that any tax return submitted by the taxpayer was done voluntarily and so incapable of being subject to an enquiry under Section 9A TMA (argument 3).

The appellant's arguments

57. The appellant argues that there is a clear statutory requirement that a notice to file must be sent by an officer, which was not done in this case. Section 8 TMA, by virtue of the wording "by a notice given to him by an officer of the Board", requires a notice to file to be

issued under the authority of an officer of HMRC. This was first established in *Patel* [2018] UKFTT 185 at [117];

> "Section 8(1) TMA contains a specific statutory requirement to the effect that HMRC must give a taxpayer notice to file a return. It is, as I have explained, a requirement off which many other provisions of the self-assessment compliance (and tax penalty) code pivot. Unless that notice is given any return filed by the taxpayer cannot be a return "under section 8" for the purposes of s.9A TMA. Parliament has expressly imposed that condition. That is not, in my view, a statutory requirement with which the parties can waive or dispense with by agreement."

58. This was confirmed by the Upper Tribunal in *HMRC v Rogers & Shaw* [2019] UKUT 406:

> "32. ….s8 does not impose a requirement that an officer of the Board is identified in the notice as the giver of the notice. Rather, it imposes a substantive requirement that the giving of a notice must have been under the authority of an officer of HMRC. Therefore, if a police constable, for example, purported to require a taxpayer to submit a tax return that would not be a lawful request under s8 (unless the police constable happened also to be an officer of HMRC). Instead, the requirement is that whoever requires the notice to be given, whether identified or not, has the status of an HMRC officer."

59. In this appeal the purported notice, unlike earlier versions of section 8 notices, was not drafted to be sent by an officer and HMRC has not supplied any evidence that an officer was involved in the process at all but instead was issued as part of an automated process.

60. Following *Rogers & Shaw,* section 103 Finance Act 2020 was introduced. The appellant argued that HMRC's argument (below) as to the effect of section 103, overstated the effect of the new legislation. Section 103 clearly applies to the power to issue notices under section 8. However, section 103 does not allow the whole notice process to be carried out without any human involvement.

61. Section 103 requires these functions to be carried out "by HMRC" which is not some amorphous concept but defined by section 103(4) effectively as "the Commissioners and Officers", in other words human resources.

62. The effect of section 103 is therefore that functions to be carried out by officers are valid if they are actually carried out by a Commissioner and avoids incongruous outcomes by reference to which particular individual in the department sanctioned a particular action. Section 103 makes clear that carrying out the function "may involve the use of the computer or otherwise" but the process must still be subject to an element of human supervision. This interpretation is supported by two further points.

63. First, as section 103 was given retrospective effect (section 103(5)), this could catch previous notices and make them compliant when they were not before, giving rise to penalties which it would be too late to rectify. This reading is inconsistent with the Human Rights Act 1998 yet the Finance Bill was certified as compliant with human rights during its passage through Parliament. To the extent necessary section 103 should be interpreted in a way that is Convention compliant (*Ghiadan v Godin-Mendoza* [2004] 2AC 557).

64. Second, Parliament would have been aware of existing legislation where taxpayers are required to engage with a specific officer. For example, section 8 requires the tax return to be delivered "to the officer [who gave the notice]" and section 31A TMA requires a notice of appeal against an assessment under section 30A "must be given in writing…to the relevant

officer of the Board" being the officer by whom the [relevant notice] was given". It would not be possible for taxpayers to comply with these provisions if the functions are carried out by an unidentified computer. This supports the argument that Parliament was not sanctioning a wholly automated process.

65. Separately, the appellant also challenged whether, even on HMRC's interpretation of section 103, the notices to file were issued "by HMRC". HMRC's position is that the notices were issued "automatically" whether they were issued from within HMRC or by an outside contractor, which cannot meet the requirements of section 103.

66. Accordingly, no notice was sent that fulfilled the conditions in section 8. The appellant took the facts of the decision in *Rogers & Shaw* as illustrative, accepting the limitations of applying a decision on the facts of one appeal to another. In *Rogers & Shaw* the Upper Tribunal requested additional evidence as to the process by which section 8 notices were issued;

> "55.... HMRC duly submitted witness statements of four HMRC officers dealing with the "end to end process" by which s8 notices were issued. The taxpayers did not challenge any of that evidence.
>
> 56. The witness statement of Officer Michelle McClure in particular demonstrated that a team consisting of HMRC officers (the "Operational Excellence Business Delivery SA team") formulates, and keeps updated, criteria for deciding which taxpayers are to be required to submit tax returns. Having formulated those criteria, HMRC's computers perform an automated scan of their database to identify taxpayers who meet the criteria. A small team of HMRC officers then manually checks a small sample of 200 cases (essentially to check that those cases meet the criteria as a high level check of the automated scan). The witness statements of Officer Elisa Simmonds and Officer Martin Hodge explain that HMRC themselves send notices to file in digital form and that HMRC have outsourced the function of sending out notices in hard copy form to a third party provider called "Communisis".
>
> 57. We agree with the taxpayers that HMRC's evidence does not establish that a specific, identified HMRC officer took the decision to send s8 notices to them. However, as we have explained in our discussion of HMRC's Grounds 3 and 4, the statute does not require a specific officer to be identified. The taxpayers also argued that HMRC's evidence did not even demonstrate that HMRC officers generally had authorised the giving of s8 notices (since the actual selection exercise was performed by computer and hard copy notices were physically despatched by Communisis). We reject those submissions. HMRC officers decided on applicable criteria and taxpayers meeting those criteria received s8 notices. The fact that a computer performed the task of identifying taxpayers who met the criteria does not alter the conclusion that HMRC officers authorised the giving of notices to taxpayers who were so identified. Nor does it matter that Communisis physically sent out hard copy s8 notices. The legislation does not require officers personally to place stamped letters in post-boxes. It is enough that officers have decided the criteria to be satisfied for a taxpayer to receive a s8 notice leaving the implementation of that decision to administrative staff and contractors."

67. Here there has been no evidence that officers decided the criteria for issuing a notice and as to whom implementation of that process was left. Accordingly, even if section 103 allows HMRC to automate the entire process and allowed the issue of a section 8 notice to be

performed by HMRC computers, there is still no evidence to show that was done by an HMRC computer.

HMRC's arguments

68. HMRC accepted the relevance of the decision in *Rogers & Shaw* but argued that the issue was now covered by section 103(1) of the Finance Act 2020;

> "(1) Anything capable of being done by an officer of Revenue and Customs by virtue of a function conferred by or under an enactment relating to taxation may be done by HMRC (whether by means involving the use of a computer or otherwise)."

69. The application of section 103(1) is clarified by Section 13(2)

> (2) Accordingly, it follows that HMRC may ….
>
> (a) give a notice under section 8…."

70. Further more section 103 is, by virtue of section 103(5) deemed always to have been in force.

71. Therefore there is neither the requirement that an individual officer should be identified on the notice to file nor that an individual officer should give the notice to file. The only requirement is that it should be HMRC as opposed to some other authority that gives notice and this can involve the use of computer.

72. It is clear that in this appeal the notices to file were issued by HMRC. Ms Wilton's evidence, supported by the relevant microfiches, was that when a notice to file was issued automatically by the computer a microfiche record of that issue was kept. It was therefore HMRC's position that the notices complied with the requirements of section 8 and are valid.

Discussion

73. It is common ground that the requirement in *Rogers & Shaw* that "whoever requires the notice to be given, whether identified or not, has the status of an HMRC officer" (*Rogers & Shaw* at [32]) is overridden by section 103 Finance Act 2020 in that section 103 provides that any function to be carried out by an officer "may be done by HMRC (whether by means involving the use of a computer or otherwise)".

74. The appellant seeks to limit the application of section 103 by reading into the requirement that the function "may be done by HMRC" as still requiring human intervention, that is to say individuals in HMRC, not necessarily officers. I disagree. The natural meaning of the wording in section 103 is to allow something to be done by HMRC as a body, including automating processes that previously required something to be done by an officer of HMRC, being in the current appeal the issue of section 8 notices. Provided that process is carried out "by HMRC" (which, without exploring the limits of artificial intelligence, must necessarily involve human intervention to programme the computer to issue the notices on the occurrence of certain events) it is valid, even without the identifiable authority of an identifiable human.

75. The appellant raises a supplemental point as to the Human Rights Act 1998 and the retrospective effect of this legislation. Mr Gordon referred in a footnote to his submissions to the judgment of the House of Lords in *Ghiadan v Godin-Mendoza*, a case on discrimination against same sex couples in the context of housing tenancies. Section 3 of the Human Rights Act 1998 requires legislation to be read so as to be compatible with the European Convention on Human Rights;

> "3(1) so far as possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights"

76. The appellant's remedy is to construe the legislation as he has suggested above, namely requiring human intervention but not necessarily that of an officer. The appellant's remedy would narrow the effect of section 103 but not eliminate the retrospective effect. How that ensures compliance with the Human Rights Act is not clear. Article 1 of the First Protocol of the European Convention on Human Rights might be being invoked here but it is not for the Tribunal to speculate as to the grounds for doing so. It is for the appellant, who is represented by tax counsel in this appeal, to make this point and he has not done so.

77. The appellant also raises consequential difficulties in the wider tax legislation that requires the taxpayer to respond to the officer who has served a notice and so on. Prior to the enactment of section 103, *Rogers & Shaw* was authority for notices not needing to be issued by a named officer and it necessarily follows that, if there is no named officer, the return cannot be sent back to that officer. See *Rogers & Shaw* at [33 -34];

> "33. The FTT considered that s8(1)(a) of TMA requires a return to be delivered to "the officer", being the same officer who gives the s8 notice and relied on this conclusion as supporting its decision that the s8 notice had to be given by an identified "flesh and blood" officer. However, the statutory scheme as a whole does not justify this approach. By virtue of s2 of the Commissioners for Revenue & Customs Act 2005 ("CRCA"), the "officers" of HMRC are those staff that the Commissioners of Revenue & Customs have appointed for the purposes of exercising the Commissioners' functions. Section 2(4) of CRCA provides that anything commenced by one officer can be continued by another. Moreover, s113(1A) of TMA provides that:
>
>> (1A) Any notice or direction requiring any return to be made under the Taxes Acts to an inspector or other officer of the Board may be issued or given in the name of that officer or, as the case may be in the name of the Board, by any officer of the Board, and so as to require the return to be made to the first-mentioned officer.
>
> 34. Against that background, s8 cannot be construed as requiring an identified officer to give a notice requiring a return to be given to that very officer."

78. The practical difficulty therefore existed prior to section 103 being enacted.

79. In my view section 103 does not alter this practical problem and neither does the appellant's proposed interpretation as it does not require HMRC to issue section 8 notices with a named individual, whether officer or other employee.

80. The appellant raised a second and separate point as to whether, even on HMRC's interpretation of section 103, the notices had been issued "by HMRC". This is an evidential one, similar to that raised in *Rogers & Shaw* ([55]-[57]). The appellant argues, based on a comparison with Upper Tribunal's approach in *Rogers & Shaw* that HMRC must still produce evidence to show it was HMRC's computer and not, as was argued in *Rogers & Shaw*, a computer belonging to a body to whom HMRC had outsourced the process.

81. This is a difficult point but on balance I reject this argument. I am satisfied on the evidence that the notices were issued "by HMRC". Ms Wilton exhibited to her supplemental witness statement the microfiche records showing the notices had been issued to the appellant. *Rogers & Shaw* was concerned with wider issues which no longer apply following the enactment of section 103. Following the enactment of section 103 it would be excessive, as inferred by the appellant, that HMRC should each time a section 8 notice is challenged be

required to produce evidence as to the ownership of the computer generating section 8 notices. In my view the notices were generated "by HMRC" as required.

82. I therefore find that, subject to the question of the appellant's correct address considered below, that HMRC has validly issued the section 8 notices.

Enquiry Argument 2: The section 8 notices were not sent to the correct address

83. This issue is the second alternative preliminary point that the appellant must establish to be able to argue that any tax return submitted by the taxpayer was filed voluntarily and so incapable of being subject to an enquiry under Section 9A TMA (argument 3).

The appellant's arguments

84. The appellant argues that the notices to file were not sent to the correct address and so were not valid.

85. A notice under section 8 TMA must, in accordance with section 115(2)(a) TMA, be served at his usual or last known place of residence or his place of business or employment;

> "(1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place of residence.
>
> (2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed of that person—
>
> (a) at his usual or last known place of residence, or his place of business or employment…"

86. The section 8 notices in this appeal were served at the Dorset Address which is not the appellant's "usual or last known place of residence". The appellant's place of residence was the Isle of Man Address which was used by an officer of HMRC on 6 April 2009 and by another officer on 1 March 2010, a month before the 6 April 2010 notice.

87. The Dorset Address is, according to evidence produced by HMRC, the address of a company nominated by the appellant in June 2009 as the appellant's UK agent for the purposes of the non-resident landlord scheme. The registration form and acknowledgement by HMRC make it clear that the Dorset Address was the appellant's correspondence address for the purposes of the non resident landlord scheme.

88. HMRC have justified using the Dorset Address on the grounds that the appellant was the director and named as a person with significant control of Woodsford Limited due to ownership and voting rights. Even if this were correct it is irrelevant to section 115(2).

89. The company and the appellant are separate legal entities and it is just not possible to read the company's place of business as the appellant's.

90. In reply to HMRC's arguments set out below, the appellant argues that Judge Redston was wrong in *Marano v HMRC* [2020] TC 07685 to suggest that any address could be used as section 115 is mandatory. "May" can be permissive, particularly in more modern legislation but the TMA is not in that sense modern legislation.

91. The decision in *R(on the application of Spring Salmon and Seafood ltd) v IR Commissioners* [2004] BTC 8 and Judge Mosedale's comments in the First-tier Tribunal in *Tinkler v HMRC* [2016] UKFTT 0170 must be seen in the light of the Court of Appeal decision in *Tinkler v HMRC* [2019] EWCA 1392 which shows that notice must be given to the taxpayer in accordance with the statute.

92. In any event this is not a case where the taxpayer failed to notify HMRC of a change in address but where HMRC unilaterally adopted the Dorset Address despite information at their disposal showing the ongoing residence was the Isle of Man Address.

HMRC's arguments

93. HMRC's starting point is that there is no doubt the appellant received the notices. The appellant has not claimed he never received the notices and indeed attached them to his witness statement. Rather the complaint is that they were sent to the wrong address.

94. HMRC argued that the real test is whether the notices satisfy section 8 TMA and Section 115 does not impose a restriction on the way HMRC can satisfy those conditions.

95. Section 8 provides that a person "may be required by a notice given to him…" to file a return. Section 115(2) provides that any notice;

> "….**may be** served by post and …**may** be so served addressed to that person
>
> (a) at his usual or last known place of residence, or his place of business or employment…" (*HMRC's emphasis added*)

96. In *Marano* Judge Redston in this Tribunal said at [163];

> "TMA s115(2) provides that a notice "may" be served addressed to a person at 'his usual place of business'. The provision is not exhaustive."

97. HMRC also referred to *R (on the application of Spring Salmon and Seafood ltd) v IR Commissioners* [2004] BTC 8 where Lady Smith, sitting in the Outer House of the Court of Sessions in a case concerned with giving a notice of enquiry under paragraph 24 of Schedule 18 to the Finance Act 1998, said:

> "[32] I also agree that service or intimation of a notice of inquiry does not appear to be a step that calls for special formality but rather falls into the category of cases where it is recognised that **the purpose of service of a notice is to see to it that the recipient is informed. Indeed, it is probably more accurate to refrain from referring to "service" of the notice.** Paragraph 24 does not require "service" and since, as I have already discussed, the notification required does not even need to be in writing, it is better to refer to the notice as requiring intimation.
>
> [33] **… s.115 is not, in my view, prescriptive. It certainly sets out a means by which the Inland Revenue can put effective intimation beyond doubt but these are not the only means by which intimation may be achieved.** I see no reason why, for instance, effective intimation would not be achieved by handing a notice of enquiry to a company director in the course of a meeting." *(HMRC's emphasis added)*

98. Further in *Tinkler* in this Tribunal Judge Mosedale commented at [75];

> "the expression 'usual or last known place of residence' shows Parliament was trying to strike a balance between the taxpayer being given actual notice of an enquiry while at the same time giving constructive notice of an enquiry to a taxpayer who does not keep HMRC up to date with his address"

99. Section 115 was designed to protect HMRC's ability to be deemed to have notified taxpayers not prevent taxpayers being actually notified in other ways.

100. In any event, section 115 was satisfied because the Dorset Address was the appellant's business address as it is the registered address of Woodsford limited and the partnership to which he belongs. Further, in June 2009 the appellant completed a form NRL1 for non-resident landlords and included the Dorset Address as his correspondence address.

Discussion

101. It is clear that the appellant received the section 8 notices and I find that that as a fact that he did so.

102. There appears to me to be two crucial questions here;

(1) Whether it is sufficient for the appellant to have received the notices irrespective of the address to which HMRC sent them; and

(2) If not, whether the Dorset Address is the appellant's "usual or last known place of residence, or his place of business or employment"

103. HMRC argues that section 115(2) allows HMRC to be treated as having notified the taxpayer if it delivers the notice in accordance with the terms of section 115(2). However, if there is evidence that the taxpayer has in fact received notice then failure to comply with section 115(2) is irrelevant.

104. The appellant sought to dismiss the comments of Lady Smith in *Spring Salmon* and Judge Mosedale on the basis that *Tinkler* had been reversed in the Court of Appeal. The appellant did not argue anything turned on the Upper Tribunal decision. In my view the Court of Appeal judgment was based on the separate issue as to whether the taxpayer's agent could be deemed to have been served with the relevant notice. This Tribunal had decided (at [89]) that the taxpayer had never received the notice from HMRC and HMRC were seeking to establish receipt through the agent, a different point entirely. In my view the Court of Appeal judgment therefore does not affect the point in issue in this appeal.

105. I also note that the decision of Judge Short in this Tribunal in *Troy Homes* [2020] UKFTT 174 concerned a notice which the Tribunal determined had not been received by the taxpayer and so Judge Short's comments at [54] should seen in that context:

106. In my view section 115(2) does not require HMRC to notify a taxpayer under section 8 in accordance with section 115(2). HMRC "may" do so and if it does so then the taxpayer is deemed to have had notice but if HMRC does not do so, then it must show the taxpayer had actual notice. In the current circumstances there is no dispute that the appellant received the notice.

107. It is therefore not necessary for me to decide whether the Dorset Address is the appellant's "usual or last known place of residence, or his place of business or employment" within section 115(2). However, for completeness I shall do so.

108. HMRC sent the section 8 notices to the Dorset Address and have justified doing so on the ground that;

(1) This is the address given to them on the non-resident landlord form signed in June 2009

(2) the appellant's connection with Woodsford Limited and the partnership amounts to a "place of business or employment".

109. I do not accept either of HMRC's arguments.

110. The form NRL 1 clearly provides two boxes for addresses, Box 4 asks for "your residential address" and Box 5 asks for "correspondence address if applicable". The appellant completed the form with the Isle of Man Address in Box 4 and the Dorset Address in Box 5. There is nothing on NRL1 that indicates that HMRC will take either address as being the taxpayer's address for wider tax purposes. Indeed, on the basis of Box 4, if anything, HMRC should conclude from the completed NRL1 that the Isle of Man Address is the appellant's usual or last known place of residence.

111. Ms Wilton produced evidence that the address on HMRC's system was changed in July 2009 to the Dorset Address by exhibiting a screen shot of HMRC's records. However, she did not produce any evidence as to why it was so changed. I therefore conclude in light of HMRC's reliance on the NRL1 that the change in July 2009 was prompted by receipt of the form NRL1 in June 2009 and adds nothing to the argument, HMRC simply having recorded in error the address taken from Box 5.

112. Further, I do not accept that the connection with the company or the partnership amounts to a "place of business or employment".

113. Accordingly, I find that HMRC did not send the notices to the appellant's "usual or last known place of residence, or his place of business or employment" for the purposes of section 115(2).

Enquiry Argument 3: The return was made voluntarily

114. This argument by the appellant applies if HMRC have failed to serve a valid notice under section 8, whether because of argument 1 or 2 above.

115. Having rejected the appellant's argument 1 and 2, I therefore find that HMRC did serve a valid notice but I will consider this argument for completeness.

the appellant's arguments

116. The appellant argued that the returns submitted by the appellant were made voluntarily as HMRC failed to serve a valid section 8 notice, whether because of argument 1 or 2.

117. If no valid section 8 notice was served then the returns were made voluntarily. Accordingly, they could not attract a valid notice under section 9A TMA.

118. HMRC is entitled to issue a closure notice under section 28A only where "an enquiry under section 9A (1) of this Act is completed …" (section 28A(1)). See *Patel v HMRC* [2018] UKFTT185 at [117].

119. Parliament introduced section 12D TMA to address some of the difficulties concerning the status of voluntary returns. With effect from 12 February 2019 any return that was voluntary may now be deemed to be a return made in response to a section 8 notice. However section 12D does not retrospectively validate a previously invalid enquiry. Section 12 merely entitles HMRC after 12 February 2019 to open enquiries into returns that were previously voluntary.

120. The appellant recognised that in *Allam v HMRC* [2020] UKFTT 216 this Tribunal has recently concluded that the effect of section 12D and section 87 Finance Act 2019 which introduced section 12D is to validate pre-12 February 2019 enquiries which were previously invalid:

> "53. We agree with Ms Choudhury on this issue. It seems to us that, on a proper construction of s12D TMA and s87(3) FA 2019, the deeming rule in s12D should apply to treat historic returns (i.e. those made before 12 February 2019) which were not made in response to a notice under s8 TMA as returns made in response to a "relevant notice" and so as made under s8 TMA for the purposes of s9A TMA…
>
> 76. For these reasons, in our view, on a proper construction of s12D TMA and s87(3) FA 2019, even if the returns made by Dr Allam for the 2011-12 tax year and the 2013-14 tax year were not made in response to a notice under s8 TMA, the deeming rule in s12D should apply to treat those returns made in response to a "relevant notice" and so as made under s8 TMA for the purposes of s9A TMA."

121. The appellant understood that this decision was under appeal to the Upper Tribunal and argued that the decision missed the point. The effect of the new provisions is to validate all pre-February 2019 voluntary returns. However the power to issue a section 9A notice is predicated on the basis that there is a valid return which will be the subject of that enquiry. Accordingly a section 9A notice can be issued on or after 12 February 2019 but not before.

122. In the current appeal the "enquiries" pre-dated 12 February 2019 and there is nothing in the statutory code which retrospectively turns those invalid enquiries into valid section 9A enquiries.

HMRC's arguments

123. HMRC argued that even if the section 8 notices were invalid because they were not sent by HMRC as required by section 103 or were sent to the wrong address, the effect of section 12D TMA is to validate them and also the section 9A enquiries.

124. The effect of section 12D is that the notices are to be treated "as having been given to the person on the day the relevant return was delivered" (section 12D(2(a)).

125. HMRC adopted the reasoning in the decision in *Allam* and in particular the following comments by Judge Greenbank;

> "[60] **The FA 2019 provisions are, as we have mentioned, clearly designed to give effect to the longstanding practice of HMRC in accepting voluntary returns and treating such returns as valid for the purposes of the Taxes Acts.** The reason for doing so is to provide certainty both to taxpayers and to HMRC that the results of the process of assessment in relation to those historic returns - of which the making and delivery of a return forms part - will be respected. **That aim can only be fully achieved in respect of historic returns if it also gives effect to the results of assessments that have been made following the delivery of those returns and so must encompass the enquiry and closure process by which those assessments are made**." *(HMRC emphasis added)*

126. Accordingly the returns made by the appellant and HMRC's enquiries were valid and effective.

discussion

127. I agree with HMRC and the decision in *Allam*. It is common ground that, assuming the appellant is successful in argument 1 or 2, the conditions for section 12D are satisfied in this appeal. The appellant has delivered purported tax returns under section 8 and HMRC has treated the returns as made and delivered pursuant to a section 8 notice in that they served notices under section 9A. The only issue is the effect of the transitional provisions in section 87(3) and whether section 12D applies to a section 9A notice of enquiry issued prior to the enactment of section 12D.

128. Section 87(3) provides that:

> "(3) The amendments made by this section are treated as always having been in force"

129. Whilst the wording of section 12D is only concerned with deeming invalid section 8 notices to be valid for the purposes of HMRC enquiries, Parliament requires the same consequences as if section 12D had always been in force. Accordingly for the purposes of Section 9A there is deemed always to have been a valid section 8 notice and so a return was made under section 8 prior to the notices of enquiry being issued under section 9A. It is necessarily implicit in section 12D that the section 9A notices are valid even though they were issued before 12 February 2019.

130. Accordingly, even if I am wrong on either argument 1 or 2 I would, on the basis of section 12D, find that the section 9A notices and the closure notices were valid.

Enquiry Argument 4: The notice of enquiry for 2009-10 was sent to the wrong address

The appellant's arguments

131. The notice of enquiry issued by HMRC under section 9A TMA for tax year 2009-10 (but not 2010-11) was sent to the Dorset Address which, for the reasons set out in relation to argument 2, was not an address satisfying the conditions in section 115(2). Accordingly the section 9A notice was invalid.

132. That being the case the closure notice was also invalid.

HMRC's arguments

133. For the reasons set out in respect of argument 2, HMRC argued that the section 9A notice satisfied the obligation on HMRC to give the appellant notice, there being no requirement to comply with section 115(2) where actual notice had been given.

134. The appellant accepted that he had been notified of the enquiry. In his witness statement the appellant said;

> "I was subsequently informed by an HMRC letter of 27 June 2011 that my 2010 Tax return would be inquired into"

135. Accordingly the section 9A notice was valid.

Discussion

136. HMRC purported to issue notices of enquiry under section 9A TMA. Section 115 applies to such notices as it does to section 8 notices and neither party suggested any difference arose between the two.

137. Accordingly, for the reasons set out above in relation to argument 2 I find that section 115(2) does not require HMRC to notify a taxpayer under section 9A in accordance with section 115(2). If HMRC does not do so, then it must show the taxpayer had actual notice. Here, the appellant received the notice and so I find that the conditions for notifying the opening of the enquiry under section 9A have been satisfied.

138. However, if required, I find that HMRC did not send the notices to the appellant's "usual or last known place of residence, or his place of business or employment" for the purposes of section 115(2).

THE SUBSTANTIVE APPEAL

139. The substantive issue in this appeal concerns the availability and timing of US tax relief to Lloyds underwriters and specifically the timing of such credit under the 1997 Regulations. The appellant's case is that the 1997 Regulations as they apply to US tax are *ultra vires* the enabling legislation and that he should obtain relief in accordance with the general provisions in Regulation 4.

The substantive appeal: the appellant's arguments

140. The appellant argues the narrow but important point that Regulation 6 (and the related proviso in Regulation 4) is *ultra vires* on the grounds that Section 182(1)(d) of the Finance Act 19943 did not give HMRC power to introduce Regulations that provided different relief in different circumstances. This point was developed by the appellant in several arguments.

141. Section 182(1) provides:

> "(1) The Board may by regulations provide–

(a) for the assessment and collection of tax charged in accordance with section 171 above (so far as not provided for by Schedule 19 to this Act);

(b) for making, in the event of any changes in the rules or practice of Lloyd's, such amendments of this Chapter as appear to the Board to be expedient having regard to those changes;

(c) for modifying the application of this Chapter in cases where a syndicate continues after the end of its closing year or a member dies or otherwise ceases to carry on his underwriting business;

(d) for giving credit for foreign tax."

142. The appellant argued that the only relevant *vires* granted by Section 182 was to provide "for giving credit for foreign tax". Regulations 3 and 4 achieved that.

143. Further, other paragraphs in section 182(1) expressly provided for situations where different treatment is permissible but (d) did not do so in respect of foreign tax credits.

144. The position is entirely different under section 45(3) Finance (No.2) Act 1995 which amended Section 182 by adding the following new provision:

"(6) Any power to make regulations conferred by this section includes power to make—

(a) different provision for different cases or different purposes

(b) …."

145. Regulations 6 and 7 represent "different provision for different cases or different purposes" and so had the 1997 Regulations been laid after 6 April 2006 when section 182(6) took effect for income tax purposes, there would have been no question of their being *ultra vires*. Enacting section 182(6) would have been entirely unnecessary had the earlier version of the legislation implicitly permitted different provisions for different cases or different purposes. Given the principle that Parliament does not legislate in vain, this points towards the limited scope of the *vires* as they stood in 1997.

146. This point had been anticipated when the regulations were being contemplated. In a letter of 11 July 1996 obtained by the appellant under the FoI request, one official is noted as saying:

I can see that we might get away with this, and no doubt [REDACTED] will know what advice we have received in the past about the scope of the powers that this Section gives to the Board. My only concern is that we should not get too far down the road towards being committed to a particular solution before we are sure we can actually implement it, and my own inclination would still be to check the position with East Wing [Solicitors Office] sooner rather than later"

147. Later on advice from Solicitors Office was sought and the advice given was that section 182(2)(d) was wide enough but the opinion obtained was concise and necessarily irrelevant to this Tribunal.

148. However, the fact that the Regulations replaced but did not change an existing informal agreement does not determine the question as to whether those Regulations were *ultra vires*. That can only be determined by reference to the provisions in section 182(1)(d) as properly construed using the standard tools of interpretation including context.

149. The appellant relied upon the general principles of interpretation as summarised in the standard works Bennion on Statutory Interpretation and Craies on Legislation and in particular the following passages from Craies:

> "subordinate legislation maybe challenged on the grounds that it was not an exercise of the kind that was contemplated when the relevant powers conferred" [3.4.1]

> "it is common for power to legislate to be conferred in terms permitting the making of the incidental or supplemental provision… As a general rule it can be expected that anything at all significant, and certainly anything involving significant intrusion on the liberty of the subject, will not reliably be effected in reliance on a mere power to make incidental or supplemental provision' [3.4.10]

> "even where Parliament does not fetter a discretion that it confers by reference to express considerations, constraints and limitations arise both from the rule of administrative law and also from the requirements to construe a broad discretion and the context in which it is conferred" [12.2.6]

> "Just because a power is drafted in broad terms does not mean one can assume that anything that falls within the literal meaning of the words used to confer that power will be considered within it. Indeed, the more apparently wide a power is, the more the courts will feel obliged to impose some kind of limitation based on the context and probable legislative intent… it is therefore common to find statutory powers drafted in very broad terms with a provision following to the effect that 'in particular' the power may be relied upon to do a specified list of things, which on examination will turn out to be a list not of the most important or likely things the recipient of the power is likely to want to do with it, but a list of the things which, because they are the most tangential or because they interfere particularly with individual rights, might otherwise be doubted" [12.2.7.2]

150. The appellant relied also upon two decisions, both cited by Caries. Stuart-Smith LJ in the Court of Appeal in *R (oao Spath Holme Ltd) v Secretary of State for the Environment, Transport and the Regions* [2000] 3 WLR 141 at [30]:

> "statutory power is conferred for public purposes as it were on trust, not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament, when conferring it, is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms."

151. Lord Browne-Wilkinson in *R v Secretary of State for the Home Department, ex parte Pierson* [1998] AC 539 at 573G:

> "I consider first whether there is any principle of construction which requires the court, in certain cases, to construe general words contained in the statute as being impliedly limited. In my judgement that is such a principle."

152. The relevant question is what Parliament had envisaged by the use of the words found in the Finance Act. Lord Nicholls in *Spath Holme* said:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the

language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg A G* [1975] AC591, 613:

> 'We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used.'

153. The appellant submits it is clear that before 6 April 2006, the operative date for section 182(6), there was no legislative authority allowing for different provisions for different cases such as to deal differently with tax paid in North America from tax paid in other countries. Accordingly the special provision in regulations 6 and 7 is *ultra vires.*

The substantive appeal: HMRC's arguments

154. HMRC argued that regulation 6 was not *ultra vires*.

155. HMRC cited the following passage from Bennion at p.303:

> "delegated legislation is presumed to be valid unless and until held to be invalid by a court with competence to deal with that question. To be effective, such a declaration must be by a court possessing the necessary jurisdiction. The burden is on the party asserting invalidity to establish it on balance of probabilities"

156. From this passage HMRC drew three conclusions;

(1) There is a presumption of validity

(2) The burden of proof rests with the appellant in this matter

(3) The Tribunal must satisfy itself that it has jurisdiction to hear a claim for legislation being *ultra vires*

157. On the question of jurisdiction HMRC referred to the decision of Judge Mosedale in this Tribunal in *Gui Hui Dong v National Crime Agency* [2014] UKFTT 369 at [42]:

> "I have to satisfy myself that I have jurisdiction to grant permission to appeal and therefore I have to consider whether paragraph 34(8) is actually *ultra vires* its enabling Act"

158. On the question of interpretation HMRC also relied on Craies on Legislation:

> "subordinate legislation maybe challenged on the grounds that it was not an exercise of the kind that was contemplated when the relevant powers conferred" [3.4.1]

159. The Finance Act 1993 confers a general power for the assessment and collection of tax charged. The power conferred by section 182(1)(d) Finance Act 1993 is clear and unequivocal in conferring a power for the provision of regulations to give credit relief for foreign tax.

160. Regulations 6 and 7 simply put on a legislative platform an already existing practice of double taxation relief. Special provisions applied to the US and Canadian foreign tax relief

because by their nature and application they are different to the other foreign taxes. This is precisely the type of legislation that would have been envisaged when the powers conferred. It is specific and unique to the Lloyds insurance market. The provisions are not broad and wide ranging but specific and discrete.

161. HMRC also relied upon the observations of Stuart-Smith LJ in the Court of Appeal in *Spath Holme* at [30]:

> "statutory power is conferred for public purposes as it were on trust, not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament, when conferring it, is presumed to have intended."

162. It is a testament to the correct approach adopted by HMRC that they have not received any other challenges relating to the application of these provisions. HMRC have fulfilled their obligation to validly use the power conferred in a just and fair way.

163. Lloyd's were consulted over the regulations and their agreement sought prior to implementation.

164. HMRC did not accept that the amendment to section 182(1) introduced by the Finance (No.2) Act 1995 is proof that the vires for Regulations 6 and 7 did not previously exist. Finance (No2) Act 1995 introduced several changes for both individual and corporate members and these changes required provisions to cater for different types of members and to allow the regulations to adapt to future changes.

165. Further, as the appellant is aware, Lloyd's insurance market is fraught with risk where the wins and losses can be significant. This risky activity is primarily the appellant's predicament not the inability to have double taxation relief.

166. Although not expressly stated, the appellant's objections are based on perceived unfairness. However the appellant was given tax relief by way of deduction for the 2010/11 resulting in a reduced liability to £106,681.69.

167. Furthermore, in R v *Secretary of State for the Home Department, Ex Parte Pierson,* [1998] AC 539 Lord Browne-Wilkinson said:

> "There is no general principle yet established that the courts have any right to quash administrative decisions on the simple ground that the decision is unfair. The wide words of the statutory discretion are not to be cut down further than is necessary to conform to the generally accepted principles of the general law. Parliament having chosen to confer wide powers on the Secretary of State intends those powers to be exercised by him in accordance with his standards. If the courts seek to limit the ambit of such powers so as to accord with the individual judge's concepts of fairness they will be indirectly arrogating to the court a right to veto a decision conferred by Parliament on the Secretary of State. Only if it can be shown that a general principle of the law would be infringed by giving the statutory words their literal meaning is it legitimate for the courts to construe the statutory words as being impliedly limited."

168. Here the statutory provisions are not ambiguous and there is no need for the Tribunal to grapple with statutory interpretation so there is no need for a purposive approach.

169. Further, there is no mischief necessary to be remedied but the purpose of the regulations was clear as set out in Ms Wilton's evidence to ensure equality and fairness when the transition to self-assessment came into force.

170. It is HMRC's case that Finance Act 1993 had clearly defined the parameters and HMRC has stayed within the bounds of those limited powers.

Discussion on the substantive issue

171. The substantive issue in this appeal is whether Regulation 6 of the 1997 Regulations is ultra vires as being beyond the scope of the powers delegated to HMRC under section 182(1)(d) Finance Act 1993.

The Tribunal's jurisdiction

172. The first issue to be determined is whether I have jurisdiction to consider whether regulation 6 is *ultra vires*. The appellant has not raised the point, and in bringing the appeal presumably asserts by implication that I do. HMRC only made passing reference to the passage in Bennion at page 303 and the decision of Judge Mosedale in *Dong*.

173. In *Dong* Judge Mosedale reviewed the Tribunal's powers to consider the vures of delegated legislation including the judgements of the House of Lords in *Foster v Chief Adjudication Officer* [1993] CA 753 and the Court of Appeal in *EN (Serbia)* [2009] EWCA Civ 630.

174. In *EN (Serbia)* Stanley Burnton LJ (with whom the other Lord Justices agreed) in the Court of Appeal said:

> "[84] Does it follow that the tribunal…erred in law? The conventional view used to be that a subordinate judicial body, and especially an administrative tribunal, did not have jurisdiction to question the validity of delegated legislation….
>
> [86]….It seems to me that both the decision of the House of Lords in *Boddington's* case, as well as that in *Foster's* case, point powerfully to the conclusion that a tribunal decision that depends on the lawfulness of the ultra vires subordinate legislation is 'not in accordance with the law', and is liable to be set aside on appeal or reconsideration. ….
>
> [87] However, a tribunal cannot quash delegated legislation. Its decision is not binding on the courts. It may not command universal agreement. Where a tribunal considers that there is a real prospect of a statutory instrument being ultra vires or unlawful, it should give serious consideration to adjourning its proceedings in order to give the party challenging its lawfulness an opportunity to issue judicial review proceedings before the Administrative Court, if necessary seeking an expedited hearing. It is far more appropriate that such issues be litigated before and decided by the courts. However, this is likely to change if and when the AIT become part of the new tribunal structure…."

175. Judge Mosedale concluded at [42]:

> "For these reasons, I consider that, rather than adjourning, the most appropriate course is for me to determine the lawfulness of paragraph 34(8) for the purpose of this application for permission of appeal. I recognise I have no jurisdiction to quash the legislation"

176. The decision in *Dong* is not binding on me but it follows the Court of Appeal decision in *EN Serbia* and I agree. This Tribunal, whilst it cannot quash such legislation, should not apply unlawful secondary legislation and it is appropriate for me to consider whether the legislation is unlawful.

Whether Regulation 6 is ultra vires

177. Whether Regulation 6 is ultra vires depends on the proper construction of section 182(1)(d):

> "(1) The Board may by regulations provide–

…

(d) for giving credit for foreign tax."

178. As set out by Lord Nicholls in *Spath Holme* in construing legislation an objective test must be applied:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg A G* [1975] AC591, 613:
>
> > 'We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used.'

179. However, the burden of proof in this matter must be on the appellant to show why enacted regulations should be disapplied. Lord Browne-Wilkinson in *R v Secretary of State for the Home Department, Ex Parte Pierson,* said:

> "Only if it can be shown that a general principle of the law would be infringed by giving the statutory words their literal meaning is it legitimate for the courts to construe the statutory words as being impliedly limited."

180. Superficially, the 1997 Regulations as a whole provides for "giving credit for foreign tax" as permitted by section 182(1)(d) and so, HMRC argue, that is what HMRC have done. Furthermore, the history of foreign tax credits for underwriters and all of the context points towards section 182(1)(d) being intended to allow HMRC to provide in regulations for a scheme of foreign tax credit that reflected the previous non statutory arrangements and so treated US and Canadian tax differently.

181. However, the appellant's argument is that Regulation 6 goes too far. Only if Section 128(1)(d) has wording as was later introduced in 1995 is HMRC empowered to introduce a regime which treats US and Canadian tax differently. Adopting the test of Lord Nicholls in *Spath Holme,* the words of section 182(1)(d) "cannot reasonably be taken as used by Parliament with that meaning".

182. I cannot accept the appellant's arguments. Applying the objective test set out by Lord Nicholls, the appellant's arguments are not sufficient to displace the plain meaning of the words of section 182(1)(d). There may well be arbitrary or otherwise unacceptable schemes for providing credit for foreign taxes but in my view the 1997 Regulations do not cross that line.

183. I have come to this conclusion based on a construction of the legislation without any consideration of the wider context. However, the history of the Simplified Basis and the clear evidence of HMRC seeking to codify that practice in the 1997 Regulations reinforces my conclusion that the intention of Parliament was for HMRC to enact a regime as set out in the 1997 Regulations which preserved a different treatment for relief for US and Canadian tax.

184. I do not accept the appellant's references to Craies affects the position. In my view the 1997 Regulations were precisely "contemplated" by Parliament (Craies at [3.4.1]) and it is not appropriate to "impose some kind of limitation based on the context and probable legislative intent" (Craies at [12.2.7.2]). Indeed, the evidence shows that applying the context and probable intent of Parliament leads in my view to treating the 1997 Regulations as entirely within the *vires* of section 182(1)(d) Finance Act 1993.

185. For completeness it is convenient to deal separately with a number of detailed arguments raised by the parties:

(1) I do not accept HMRC's argument that it is relevant that no other taxpayers have challenged the application of Regulation 6 or 7.

(2) Further I do not accept HMRC's point that being an underwriter is risky, that the appellant was aware of that and that the consequences of these risks are the real source of the appellant's predicament.

(3) I do not accept the appellant's argument that Regulation 3 and 4 provide for giving credit for foreign tax and therefore, by implication, Regulations 6 and 7 are not necessary. This sets up the proposition that necessarily only the simplest regime can be *intra vires* even if a longer or more detailed regime would be more effective, reasonable or coherent. In my view Parliament cannot be taken to have meant that.

(4) Further, I do not accept the appellant's argument that section 182(1) provided at paragraphs (a) to (c) for differential treatment so that necessarily the draftsman did not intend for a differential regime for regulations introduced under paragraph (d). That is not apparent from the wording of those preceding paragraphs and the appellant has not made good this argument with any illustration of the point. The other paragraphs are longer and more descriptive but do not clearly show that they permit differentiating regulations in a way paragraph (d) does not.

(5) The appellant seeks to argue that, as Parliament does not legislate in vain, the insertion of section 182(6) by Finance (No2) Act 1995, expressly allowing for "different provision for different cases or different purposes", points towards the original section 182 providing limited *vires* to HMRC. The task is to construe section 182 as drafted at the time of the making of the 1997 Regulations. That later amendments clarified the position does not mean that the original wording should be construed to provide the later amendments with substantive effect. Parliament's intention in 1995 may simply have been to put the point beyond doubt.

186. For the reasons set out above I therefore reject the appellant's argument and find that Regulation 6 of the 1997 Regulations is lawful and applies to the appellant.

DECISION

187. In respect of the Enquiries Arguments I find as follows:

(1) Argument 1: the section 8 notices were issued by HMRC as required by section 8 as interpreted in the light of section 103 Finance Act 1993

(2) Argument 2: the section 8 notices were received by the appellant and so notified to the appellant as required by section 8 notwithstanding that they were not sent to the

appellant's last known address as required by section 115(2) TMA for the purposes of deemed notice

(3) Argument 3: as I have found that the appellant does not succeed in argument 1 or 2 then the tax returns were submitted in response to a valid section 8 notice, were not submitted voluntarily and so the enquiries under section 9A TMA and the consequent closure notices under section 28A were valid. Even if I am wrong on either argument 1 or 2, section 12D TMA deems the section 8 notice and the notices of enquiry to be valid.

(4) Argument 4: as regards the 2009-10 tax year, for the same reasons as argument 2, the section 9A enquiry notice was properly notified to the appellant notwithstanding that, as I find, it was sent to the wrong address.

188. I therefore dismiss the appellant's Enquiries Arguments.

189. On the Substantive Argument I reject the appellant's argument that Regulation 6 of the 1997 Regulations is *ultra vires*. Regulation 6 is lawful and applies to the appellant.

190. I therefore dismiss this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

191. 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.

IAN HYDE
TRIBUNAL JUDGE

Release date: 17 OCTOBER 2020

Appendix 1

Summary of taxation of Lloyd's syndicate and US tax relief

Calendar year		**2007**	**2008**	**2009**	**2010**	**2011**
US calendar tax year		2007	2008	2009	2010	2011
UK tax year		2007-08	2008-09	2009-10	2010-11	2011-12
2007 YoA	**syndicate**	Write insurance	Claims	Claims	Declare in May	
	taxation	Taxed in US	Taxed in US	Taxed in US	Taxed in UK	
	Relief available against UK tax			2007 US tax relieved against UK tax	2008 US tax relief relieved against UK tax	
2008 YoA	**syndicate**		Write insurance	Claims	Claims	Declare in May
	taxation		Taxed in US	Taxed in US	Taxed in US	Taxed in UK
	Relief available against UK tax				2008 US tax relieved against UK tax	2009 US tax relieved against UK tax

Appendix 2

A. legislation and regulations relevant to the Substantive Arguments

1. Section 182(1) of the Finance Act 1993 provides as follows:

> "182(1) The Board may by regulations provide–
>
> (a) for the assessment and collection of tax charged in accordance with section 171 above (so far as not provided for by Schedule 19 to this Act);
>
> (b) for making, in the event of any changes in the rules or practice of Lloyd's, such amendments of this Chapter as appear to the Board to be expedient having regard to those changes;
>
> (c) for modifying the application of this Chapter in cases where a syndicate continues after the end of its closing year or a member dies or otherwise ceases to carry on his underwriting business;
>
> (d) for giving credit for foreign tax.
>
> ….

2. The Lloyd's Underwriter's (Double Taxation Relief) Regulations 1997 provides insofar as relevant as follows:

> **"Citation, commencement and effect**
>
> 1(1) These Regulations may be cited as the Lloyd's Underwriters (Double Taxation Relief) Regulations 1997 and shall come into force on 14th March 1997.
>
> (2) These Regulations shall have effect for the year 1996-97 and subsequent years of assessment.
>
> **Interpretation**
>
> 2(1) In these Regulations-
>
> "Canadian tax" means the appropriate income tax or income taxes imposed by the Government of Canada;
>
> "final year of assessment" shall be construed in accordance with section 179(2);
>
> "foreign tax" means tax chargeable under the law of a territory outside the United Kingdom;
>
> "member" means a member of Lloyd's who is an individual and who is or has been an underwriting member;
>
> "Part XVIII" means Part XVIII of the Taxes Act;
>
> "the Taxes Act" means the Income and Corporation Taxes Act 1988;
>
> "United States tax" means the appropriate Federal income tax or Federal income taxes of the United States of America imposed by the Internal Revenue Code.
>
> (2) For the purposes of these Regulations an underwriting year and a year of assessment shall be deemed to correspond to each other if the underwriting year ends in the year of assessment.

(3) References to a section, without more, are references to that section of the Finance Act 1993.

Pooled foreign tax

3(1) For the purposes of Part XVIII foreign tax paid in respect of profits or losses arising from a member's underwriting business in a year of assessment shall be taken into account in accordance with paragraph (2).

(2) Foreign tax paid as mentioned in paragraph (1) shall be taken into account by reference to the aggregate amount of such amounts of foreign tax as are paid (whether or not under the law of more than one territory outside the United Kingdom) in respect of income that is taken into account in computing the profits or losses of the member's underwriting business; and accordingly the provisions of Part XVIII shall apply as if-

(a) references, however expressed, to tax paid under the law of a territory outside the United Kingdom were references to that aggregate amount paid as a single payment in respect of a single source of income, and

(b) references to United Kingdom tax chargeable in respect of any income were references to United Kingdom tax chargeable in respect of the total profits of the member's underwriting business.

Allocation of foreign tax to United Kingdom years of assessment-syndicate profits

4(1) For the purposes of regulation 3, foreign tax referred to in that regulation that is paid in respect of income specified in paragraph (2), other than foreign tax to which regulation 6 or 7 applies, shall be allocated to the year of assessment specified in paragraph (3).

(2) The income specified is the income that is taken into account in computing the profits or losses of the member's underwriting business falling within section 172(1)(a) or (b).

(3) The year of assessment specified is the same year of assessment as the year of assessment to which, by virtue of section 172, the profits or losses referred to in paragraph (2) relate.

Allocation of foreign tax to United Kingdom years of assessment-non-syndicate profits

5(1) For the purposes of regulation 3, foreign tax referred to in that regulation that is paid in respect of income specified in paragraph (2), other than foreign tax to which regulation 6 or 7 applies, shall be allocated to the year of assessment specified in paragraph (3).

(2) The income specified is the income that is taken into account in computing the profits or losses of the member's underwriting business falling within section 172(1)(c).

(3) The year of assessment specified is the same year of assessment as the year of assessment to which, by virtue of section 172, the profits or losses referred to in paragraph (2) relate.

Allocation of foreign tax to United Kingdom years of assessment-United States tax

6(1) This regulation applies to foreign tax that is United States tax paid by Lloyd's in accordance with a United States tax return rendered by them for a calendar year in respect of income that is taken into account in computing the profits or losses of the member's underwriting business.

(2) For the purposes of regulation 3 and subject to paragraph (3), United States tax paid as mentioned in paragraph (1) shall be allocated to the year of assessment next but one following the year of assessment to which the underwriting year for which the return is made corresponds.

(3) Where the member's final year of assessment is the year 1996/97, United States tax paid as mentioned in paragraph (1) which under paragraph (2) would have been eligible for relief in a later year of assessment had not the member's final year of assessment been the year 1996/97 and which has not been used for relief in an earlier year of assessment, shall be allocated to the year 1996/97.

Allocation of foreign tax to United Kingdom years of assessment-Canadian tax

7(1) This regulation applies to foreign tax that is Canadian tax paid by Lloyd's in accordance with a Canadian tax return rendered by them for a calendar year in respect of income that is taken into account in computing the profits or losses of the member's underwriting business.

(2) For the purposes of regulation 3 and subject to paragraph (3), Canadian tax paid as mentioned in paragraph (1) shall be allocated to the year of assessment next following the year of assessment to which the underwriting year for which the return is made corresponds.

(3) Where the member's final year of assessment is the year 1996/97, Canadian tax paid as mentioned in paragraph (1) which under paragraph (2) would have been eligible for relief in a later year of assessment had not the member's final year of assessment been the year 1996/97 and which has not been used for relief in an earlier year of assessment, shall be allocated to the year 1996/97…."

3. The Finance (No.2) Act 1995 provides insofar as relevant as follows:

"45(1) Omit section 173 of, and Schedule 19 to, FA 1993 (Lloyd's underwriters: assessment and collection of tax).

(2) In section 182 of that Act (regulations) in subsection (1)(a) (power of Commissioners for Her Majesty's Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 171 of FA 1993, so far as not provided for by Schedule 19 to that Act) omit "(so far as not provided for by Schedule 19 to this Act)".

(3) In that section, at the end insert—

"(6) Any power to make regulations conferred by this section includes power to make—

(a) different provision for different cases or different purposes, and

(b) incidental, supplemental or transitional provision and savings.".

(4) …."

B. legislation and regulations relevant to the Enquiry Arguments

1. Section 8 TMA provides insofar as relevant as follows:

> "8(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board—
>
> (a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice; and
>
> (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required."

2. Section 9A TMA provides insofar as relevant as follows

> "(1) An officer of the Board may enquire into a return under section 8 or 8A of this Act 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…."

3. Section 28A TMA provides insofar as relevant as follows

> "(1) An enquiry under section 9A(1) of this Act is completed when an officer of the Board by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions.
>
> In this section "the taxpayer" means the person to whom notice of enquiry was given…."

4. Section 115 TMA provides insofar as relevant as follows;

> "(1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place or residence.
>
> (2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed of that person—
>
> (a) at his usual or last known place of residence, or his place of business or employment, or
>
> (b) in the case of a company, at any other prescribed place, and in the case of a liquidator of a company, at his address for the purposes of the liquidation or any other prescribed place.
>
> (3) In subsection (2) above "prescribed" means prescribed by regulations made by the Board, and the power of making regulations for the purposes of that subsection shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons."

5. Section 87 Finance Act 2019 (inserting Section 12D into the TMA) provides insofar as relevant as follows;

> "(1) In Part 2 of TMA 1970 (returns of income and gains), after section 12C insert—
>
> "**Voluntary returns**

12D Returns made otherwise than pursuant to a notice

(1)This section applies where—

(a) a person delivers a purported return ("the relevant return") under section 8, 8A or 12AA ("the relevant section") for a year of assessment or other period ("the relevant period"),

(b) no notice under the relevant section has been given to the person in respect of the relevant period, and

(c) HMRC treats the relevant return as a return made and delivered in pursuance of such a notice.

(2) For the purposes of the Taxes Acts—

(a) treat a relevant notice as having been given to the person on the day the relevant return was delivered, and

(b) treat the relevant return as having been made and delivered in pursuance of that notice (and, accordingly, treat it as if it were a return under the relevant section).

(3) "Relevant notice" means—

(a) in relation to section 8 or 8A, a notice under that section in respect of the relevant period;

(b) in relation to section 12AA, a notice under section 12AA(3) requiring the person to deliver a return in respect of the relevant period, on or before the day the relevant return was delivered (or, if later, the earliest day that could be specified under section 12AA).

(4) In subsection (1)(a) "purported return" means anything that—

(a) is in a form, and is delivered in a way, that a corresponding return could have been made and delivered had a relevant notice been given, and

(b) purports to be a return under the relevant section.

(5) Nothing in this section affects sections 34 to 36 or any other provisions of the Taxes Acts specifying a period for the making or delivering of any assessment (including self-assessment) to income tax or capital gains tax."

(2)…..

(3) The amendments made by this section are treated as always having been in force.

(4) However, those amendments do not apply in relation to a purported return delivered by a person if, before 29 October 2018—

(a) the person made an appeal under the Taxes Acts, or a claim for judicial review, and

(b) the ground (or one of the grounds) for the making of the appeal or claim was that the purported return was not a return under section 8, 8A or 12AA of TMA 1970 or paragraph 3 of Schedule 18 to FA 1998 because no relevant notice was given.

(5) The Treasury may by regulations—

(a) make such amendments of relevant tax legislation as they consider appropriate in consequence of subsection (1) or (2);

(b) make such amendments of section 12D of TMA 1970 (inserted by subsection (1) of this section) as they consider appropriate in connection with the coming into force of section 61 of, and Schedule 14 to, F(No.2)A 2017 (digital reporting and record keeping for income tax etc).

(6) In subsection (5)(a) "relevant tax legislation" means—

(a) TMA 1970,

(b) Schedule 18 to FA 1998, or

(c) any other enactment relating to income tax, corporation tax or capital gains tax.

(7) Regulations under this section are to be made by statutory instrument.

(8) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons."

6. Section 103 of the Finance Act 2020 provides insofar as relevant as follows:

"(1) Anything capable of being done by an officer of Revenue and Customs by virtue of a function conferred by or under an enactment relating to taxation may be done by HMRC (whether by means involving the use of a computer or otherwise).

(2) Accordingly, it follows that HMRC may (among other things)—

(a) give a notice under section 8, 8A or 12AA of TMA 1970 (notice to file personal, trustee or partnership return);

(b)….

(3) Anything done by HMRC in accordance with subsection (1) has the same effect as it would have if done by an officer of Revenue and Customs (or, where the function is conferred on an officer of a particular kind, an officer of that kind).

(4) In this section—

"HMRC" means Her Majesty's Revenue and Customs;

references to an officer of Revenue and Customs include an officer of a particular kind, such as an officer authorised for the purposes of an enactment.

(5) This section is treated as always having been in force.

(6) …..."