TC05075

Appeal number: TC/2015/00130

SELF ASSESSMENT – notice of enquiry into return given under Section 9A Taxes Management Act 1970 – whether notice of enquiry valid if return incorrectly described in notice – no – whether notice saved by Section 114 Taxes Management Act 1970 – no

FIRST-TIER TRIBUNAL
TAX CHAMBER

MICHAEL MABBUTT **Appellant**

- and -

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

TRIBUNAL: JUDGE JANE BAILEY
MS JANE SHILLAKER

Sitting in public at Fox Court, London on 26 January 2016

Keith Gordon, of counsel, for the Appellant

Ms Moira Browne, presenting officer, for the Respondents

Introduction

1. This appeal is against a closure notice dated 1 July 2014 by which the Respondents close their enquiry in the Appellant's tax return for the year ended 5 April 2009. The Appellant appeals against the conclusions in the closure notice on the basis that an enquiry was not opened because no valid notice of enquiry was given. If there was no valid enquiry then there can be no valid closure notice.

Background

2. The parties are agreed that the only issue for us to decide is whether a valid enquiry notice was served under Section 9A Taxes Management Act 1970 ("TMA 1970"). If we find that there was then the Appellant's appeal against the conclusions in the closure notice will continue on the basis of argument as to the effectiveness of a DOTAS registered tax scheme and how its operation affects the calculation of the tax due for the year ended 5 April 2009; the Appellant's appeal is likely to be stood behind a lead case.

3. If we find that there was no valid enquiry notice then (subject to any appeal), as no enquiry would have been opened and the Respondents are now out of time to raise a discovery assessment, the Appellant's tax liability for the year ended 5 April 2009 will be settled on the basis of the calculations set out in his tax return for that year. The difference between the parties' calculations of the tax due is approximately £653k.

4. The parties are agreed on the background to the sending of the disputed notice of enquiry. The Respondents claim there was a minor error in the notice which is insufficient to invalidate it. The Appellant claims that the error is fatal and therefore there is no valid notice of enquiry.

Relevant legislation

5. The relevant part of Section 9A TMA 1970 is as follows:

> **9A Notice of enquiry**
>
> (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.
>
> (2) The time allowed is-

(a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the day on which the return was delivered;

…

6. Subsection 114(1) TMA 1970 provides:

114 Want of form or errors not to invalidate assessments, etc

(1) An assessment or determination , warrant or other proceedings which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

Cases cited

Norman v Golder 26 TC 293

Fleming v London Produce Co Ltd [1968] 1 WLR 1013

Baylis v Gregory [1989] 1 AC 398

R oao Barnet LBC v Traffic Adjudicator [2007] RTR 14

Pipe v HMRC [2008] STC 1911

Lee and others v HMRC (2008) SpC 715

Sokoya v HMRC [2009] UKFTT 163 (TC)

Coolatinney Developments Ltd v HMRC [2011] UKFTT 252 (TC)

Portland Gas Storage Ltd v HMRC [2014] UKUT 0270 (TCC)

HMRC v Glyn [2015] UKUT 0551 (TCC)

Raftopoulou v HMRC [2015] UKUT 0579 (TCC)

Appellant's submissions

7. Mr Gordon opened his submissions by setting out the background to the appeal and the legislative history. He submitted that it was important that a taxpayer should understand into which return an enquiry under Section 9A TMA 1970 had been opened, because there were consequences to the opening of an enquiry. So, although the wording of Section 9A(1) TMA 1970 referred to "a return", it must be clear to the taxpayer which return was subject to an enquiry.

8. In construing Section 114 TMA 1970 the Appellant submitted that neither limb applied here. The Appellant accepted that a notice of enquiry was an "other

proceeding" so Subsection 114(1) could apply, but the Appellant did not accept that the letter of 17 January 2011 purported to be sent in pursuance of any provision of the Taxes Acts. Further, the reference to the return for the year ended 6 April 2009 was not in accordance with or according to the intent and meaning of the Taxes Acts. Therefore Subsection (1) did not apply on the facts present here.

9. The Appellant submitted that it was necessary for the Respondents to be precise with dates and Section 114 TMA 1970 did not allow the Respondents to overcome an error in the date. Where a date was concerned any error would be gross rather than minor. The Appellant referred to *Baylis v Gregory* in support of this proposition. The Appellant also referred to *Lee* where it had been suggested that best practice would be to refer to the return, and indicated that there were standard templates for the Respondents to use. Mr Gordon submitted that there must be sufficient detail to enable identification of the return in question, and that detail must be correct. Therefore neither "the year ended 2009" nor "the year ended 55 April 2009" would be legitimate – the former because it was too vague, the latter because it was inaccurate. A reference to "the year ended April 2009" might be acceptable.

10. Mr Gordon accepted that it was not necessary to explicitly refer to Section 9A TMA 1970 in opening an enquiry, but submitted that the failure to refer to it hampered the Respondents when they sought to apply Subsection 114(1) TMA 1970 because that Subsection only applied to documents which purported to be sent pursuant to a provision of the Taxes Acts.

11. In conclusion Mr Gordon submitted that the letter of 17 January 2011 appeared to attempt to open an enquiry into a non-existent return, and that return was non-existent because there was no such tax year as the year ended 6 April 2009. The Appellant submitted that the letter could not have effect unless it was remedied by Section 114 TMA 1970, and that Section 114 was prescriptive as the circumstances in which it applied. Mr Gordon submitted that the Appellant's case did not fall within those prescribed circumstances.

Respondents' submissions

12. In response Ms Browne accepted that there was an error in both letters sent on 17 January 2011 but it was submitted that this error was minor and that it did not affect the validity of the notice of enquiry. Ms Browne referred to the surrounding correspondence, particularly correspondence with the promoter of the scheme, which suggested that it must have been clear to the Appellant which return was under enquiry.

13. Ms Browne relied upon *Lee v HMRC* in submitting that there was no requirement for a notice to specifically refer to the legislation under which it was sent. Ms Browne also referred to *Coolatinney* and *Portland Gas Storage* in support of her submission that it was possible for more than one document to be taken together as the notice of enquiry, and that here there were two letters sent to the Appellant: the letter of 17 January 2011 addressed to him and the letter of 17 January 2011 addressed to the agent; they should be read together. Ms Browne submitted that the

letter to the agent, in particular, made it clear that the enquiry was to be into matters which took place in the year ended 5 April 2009. Ms Browne submitted that the Appellant would have known which return the enquiry was into as he had only filed one tax return as at 17 January 2011. It could only be that return.

14. In response to the Appellant's reliance on *Baylis v Gregory*, Ms Browne submitted that the date here was only one day out, it did not mention the wrong year. Ms Browne sought to distinguish *Pipe* and *Sokoya* on the basis that they were both cases involving penalties and the deadline for compliance was an essential part of the legislative background to the imposition of penalties. Ms Browne submitted that *Coolatinney* and *Portland Gas* were closer to the position here as in both of those cases, as with the Appellant's case and Section 9A TMA 1970, there was no specific form which the notice was required to take.

15. Ms Browne concluded by submitting that both letters of 17 January 2011 together formed the notice, that there was no requirement for Section 9A TMA 1970 to be mentioned in a notice, that the error in the date was minor and could not have affected the Appellant's understanding of what he had received and that the error was capable of being remedied under Section 114 TMA 1970.

Facts found

16. The parties were largely agreed as to the relevant facts for the purposes of this appeal. On the basis of the documents in the bundle before us, we find as follows:

a) On 29 January 2010 the Appellant submitted his tax return for the year ended 5 April 2009.

b) By letter dated 17 January 2011, the Respondents wrote to the Appellant. The relevant parts of the Respondents' letter stated as follows:

> Dear Mr Mabbutt,
>
> Thank you for your Tax Return for the year ended 6 April 2009. I am writing to tell you that I intend to enquire into this Return. I have written to your agent, Dickensons to ask for the information I need and a copy of my letter is enclosed for your information.
>
> I will not be checking other areas of your Return unless the reply, or other information, gives me reason to do so. In such circumstances, the scope of the enquiry could be widened to cover the whole of the Tax Return.

c) Enclosed with the Respondents' letter to the Appellant was a copy of the Respondents' letter dated 17 January 2011 to the Appellant's agents. This stated:

> Dear Sirs
>
> **Mr M Mabbutt**

> I have today given notice under Section 9(a) Taxes Management Act 1970, to your above named client, of my intention to enquire into his Tax Return for the year ending 6 April 2009. I enclose a copy of this notice for your information.
>
> To enable me to check that the Tax Return is correct and complete, please let me have the following information:-
>
> …

d) The parties disagreed on what constitutes the disputed notice of enquiry. The Respondents submitted that both letters of 17 January 2011 together constituted the disputed notice of enquiry; the Appellant argued that only the letter addressed to the Appellant was the disputed notice. We accept that it is possible for two or more documents together to form a notice, and that this was the case in *Coolatinney Developments Limited v HMRC* [2011] UKFTT 252 (TC) and *Portland Gas Storage Limited v HMRC* [2014] UKUT 0270 (TCC). There is nothing in the wording of Section 9A TMA 1970 which would prevent notice being given by means of more than one document. However, in this case the Respondents are clear in their letter to the agents that a copy of the notice of enquiry is enclosed with that letter. There is no reference to the letter to the agents forming part of the notice. Similarly the letter to the Appellant refers to the enclosed copy letter to the agents being enclosed "for your information". Given those descriptions we consider that the Respondents' intention was that the letter to the Appellant alone would constitute the notice of enquiry. That intention is further demonstrated in the Respondents' letter of 26 April 2011 (see paragraph 16(g) below) which refers to "my letter", not my letters, as being the disputed notice of enquiry. It was not the Respondents' intention that both letters of 17 January 2011 should together form the notice of enquiry. On that basis we find that the disputed notice of enquiry is the letter of 17 January 2011 to the Appellant alone.

e) In February 2011 there was side correspondence between the scheme promoter and the Respondents about the material sought from the Appellant and how that could best be provided. We find there was no confusion in the mind of the scheme promoters as to the arrangements into which the Respondents wished to enquire.

f) By letter dated 24 March 2011 the Appellant's agent wrote as follows to the Respondents:

> Will you please confirm that you agree with Mr Mabbutt's Tax Return for the year ended 5 April 2009, which was electronically submitted by this firm on his behalf on the 29 January 2010.
>
> We make this request as we have not received any notice of an enquiry into the tax year to 5 April 2009 to date and we are now well past the deadline for HMRC doing so.
>
> Can you please confirm in writing that you agree the Tax Return and Self Assessment on the basis as submitted.

> We would just for information confirm that we are in receipt of your 17 January 2011 letter but this does not refer to the tax year ended 5 April 2009.

g) After a chasing letter from the Appellant's agents, by letter dated 26 April 2011 the Respondents replied to the letter dated 24 March 2011. The Respondents stated:

> I can confirm that my letter dated 17 January 2011 was a valid notice under Section 9 (a) Taxes Management Act 1970 to your above named client, of my intention to enquire into his Tax Return for the year ending 5 April 2009.
>
> According to Section 114 Taxes Management Act 1970-
>
> "(1) An assessment, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding."

h) There was no explanation as to what the Respondents understood to be the error in the letter of 17 January 2011 to the Appellant nor how they understood Subsection 114(1) to apply.

i) We were not shown any further relevant correspondence on this point. By letter dated 1 July 2014 the Respondents closed the enquiry they understood they had opened. That letter was headed: "Closure of the enquiry into your Self Assessment return for the year ended 5 April 2009".

j) By letter dated 18 July 2014 the Appellant's agents appealed on behalf of the Appellant against the closure notice. The basis of appeal was that no valid enquiry had been opened for the year ended 5 April 2009.

Decision

17. We have set out above our finding that the disputed notice of enquiry is formed solely of the letter dated 17 January 2011 to the Appellant. We now set out our understanding of the component conditions in Subsection 114(1) TMA 1970 and how they should be applied. With the assistance of the authorities cited, we then apply our understanding of Subsection 114(1) to the facts found.

18. The burden of proof is upon the Respondents to satisfy us that a valid notice of enquiry was served. As the Respondents seek to rely upon Subsection 114(1) TMA 1970 to correct the error in the letter of 17 January 2011, the burden of proof is upon them to satisfy us that Subsection 114(1) applies here.

19. We consider that there are four parts to Subsection 114(1) TMA 1970. Firstly the Subsection only applies to certain documents and a notice of enquiry must be within these categories. Next, the disputed notice of enquiry must purport to be made pursuant to a provision of the Taxes Acts. Then the disputed notice must be in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts. Finally, the person or property charged or affected by the disputed notice must be designated therein according to common intent and understanding.

20. We consider below each of these parts of Subsection 114(1) and their application to the facts of this case.

Was the letter dated 17 January 2011 an assessment or determination, warrant or other proceeding?

21. The Appellant accepted that a notice of enquiry would constitute an "other proceeding" for the purposes of Subsection 114(1) TMA 1970. We agree that this is the case.

Did the letter dated 17 January 2011 purport to be made pursuant to any provision of the Taxes Acts?

22. The Appellant does not accept that the letter of 17 January 2011 purports to be made in pursuance of any provision of the Taxes Acts. Mr Gordon referred us to the definition of "purport" in Chambers dictionary:

> (of a document, etc) to give out as its meaning; to convey to the mind; to seem, claim or profess (to mean, be, etc); to mean or intend (rare)

23. The Appellant also relies upon the lack of reference to any provision of the Taxes Acts as authority for the Respondents' action in sending the letter. It is suggested that even if it is not necessary to cite the relevant legislation, the letter must actually be in pursuance of a provision of the Taxes Acts for Subsection 114(1) to apply. In response, the Respondents relied upon *Lee*, arguing that it was not necessary for a notice of enquiry to take a specific form or to refer to the legislation; a notice of enquiry will be valid provided the intention is clear. The Respondents had also argued, following *Coolatinney* and *Portland Gas*, that as it was not necessary for the notice to be in a particular format, both letters of 17 January 2011 could together form the notice of enquiry. On that basis the reference to the legislation in the letter to the agents (albeit that the legislation was mistakenly referred to as Section 9(a) TMA 1970) would be sufficient to make it clear that a notice of enquiry purported to be made in pursuance of Section 9A TMA 1970.

24. We have found that the disputed notice is the letter to the Appellant alone. We now consider what is required for a notice of enquiry to be given under Section 9A TMA 1970, in order to determine whether the letter of 17 January 2011 to the Appellant purports to be a notice of enquiry made pursuant to Section 9A.

25. Section 9A TMA 1970 requires notice of an intention to open an enquiry into a return to be given. The notice must be given within a certain period after the return in

question has been filed. It is implicit from this requirement that the notice must specify the return into which the enquiry will be opened as there is no other way in which a recipient of a notice could know if the notice had been given within the time allowed. It is also clear that notice to enquire into a return cannot be given before a return is submitted. There are no other specific requirements evident from the wording of the Section. In particular there is no requirement to refer to Section 9A TMA 1970 itself in the notice.

26. The Respondents relied upon *Lee and others v HMRC* (2008) SpC 715, a decision of the Special Commissioners (a predecessor to this Tribunal) in relation to closure notices, and we found that helpful in summarising the requirements of Section 9A TMA 1970. At paragraph 4 Dr Williams held:

> There is no set form provided in law for a section 9A notice. It is required only that the notice is in writing to the taxpayer and that it meets the legislative requirements noted above. In my judgment section 9A(1) requires that the notice indicate clearly that the Officer is giving notice of his or her "intention to" "enquire into" one or more returns. No precise words have to be used, but that intention must be clear. While it may be best practice always to refer specifically to section 9A (or the corporation tax equivalent) and to the specific return to be the subject of enquiry, that is not necessary in law. But entirely general language in a letter may not be adequate notice engaging section 9A. In particular, an indication of relevant dates is needed because section 9A(2) provides a specific "window" with regard to any return. The section expressly provides for a limited time in which an enquiry may be started. And it does not empower a general investigation into a taxpayer's affairs.

27. Looking again at the letter of 17 January 2011, the return in question is not clear because of the mistaken reference to a year ended 6 April 2009. However, it is clear that what the officer intends to do, or is claiming to do, is give notice that she will open an enquiry into a return – the officer is professing to open an enquiry into the return for the (non-existent) return for the year ended 6 April 2009. We consider that professing of intention is sufficient for us to conclude that the letter of 17 January 2011 does purport to be a notice of enquiry into a tax return. Therefore the letter of 17 January 2011 does purport to be made pursuant to a provision of the Taxes Acts.

28. In considering whether a document conveys to the mind, seems, claims or professes, we have also borne in mind other people's perception of the document. We are reinforced in our conclusion that the letter of 17 January 2011 purports to be made pursuant to Section 9A TMA 1970 by the contents of the agents' letter of 24 March 2011. In that letter the agents sought confirmation that the return for the year ended 5 April 2009 was agreed, and took the trouble to explicitly state that they had received the letter of 17 January 2011 but that that did not refer to the year ended 5 April 2009. We consider it must have been sufficiently clear to the agents that the letter of 17 January 2011 was intended as a notice of enquiry – and hence, that it purported to be made pursuant to Section 9A – because, if that was not clear then there would have been no reason for the agents to refer to the letter.

Was the letter sent on 17 January 2011 to the Appellant in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts?

29. Subsection 114(1) requires the document to be in substance and effect in conformity with the intent and meaning of the Taxes Acts. The error in the disputed notice was in describing the tax return to be enquired into as "for the year ended 6 April 2009". Subsection 4(3) of the Income and Taxes Act 2007 provides that a tax year begins on 6 April and ends on the following 5 April. A tax year does not end on 6 April, and a tax return is not made for a period ending on 6 April. The Appellant's submissions were that mistakes about the date are fatal to the Respondent's case. This is the case even when there can be no reasonable doubt as to which year was intended. The Respondents submitted that the mistake as to the date was a minor error and that it is capable of being remedied.

30. The Appellant relied upon the Court of Appeal's judgments in *Baylis v Gregory*, reported with the judgments of the House of Lords in *Craven v White* [1989] AC 398. In *Baylis v Gregory* the Commissioners of Inland Revenue had issued 12 assessments to capital gains tax. In error one of those assessments related to the year 1974/75 whereas the remaining assessments were correctly raised for 1975/76. The Revenue sought to rely upon Section 114 to save the assessment, arguing that the taxpayer must have appreciated that it was a mistake and that there was no confusion as to the year intended. In rejecting that argument, Slade LJ stated at 483D-F:

> … section 114, where it applies, does not strictly confer a "dispensing power". In a case where it applies, it gives the revenue or the taxpayer, as the case may be, the statutory right to claim that the assessment, warrant or other proceeding in question shall not be affected by reason of a mistake, etc. If, contrary to my view, this statutory right has any relevance in relation to an assessment which has been made for the wrong year, I think it unlikely, that the legislature would have intended that it would be exercisable where the error was a gross one – as in the present case I think it must have been. To sum up, however, in my judgment, neither section 114 nor any other statutory provision provides an escape route for the revenue if they issue an assessment for the wrong fiscal year. This is something they must get right.

31. In *Baylis v Gregory* the Revenue had issued an assessment for a different year; here the notice of enquiry was into a tax return for a tax year which does not exist. As part of his submissions to us, Mr Gordon argued that it was unclear whether the error in the letter of 17 January 2011 related to the number or to the word "ended". Had the word "ended" been replaced with "beginning" then the letter would refer to a completely different tax year, and one which had the advantage of actually being a tax year within the meaning of the Taxes Acts.

32. While we agree with the Appellant that some periods under the Taxes Acts might be expressed in relation to their start date, we take the view that that would be unusual in the context of a personal tax return. Nevertheless, we accept the underlying point made by Mr Gordon which is that where a date is fundamental to a

document then that date must be correct. It does not matter whether the error is to refer to another year altogether or to refer to a period which makes no sense in the context of a tax return.

33. The principle that the date must be correct where it is fundamental to the disputed document is reiterated by Judge Berner in *Sokoya v HMRC* [2009] UKFTT 163 (TC). In *Sokoya* the Tribunal considered whether Section 114 TMA 1970 could save a penalty notice which contained the wrong deadline for compliance. The Tribunal held that the date for compliance was a critical part of the penalty notice and it could not be cured by the application of Section 114 TMA 1970. At paragraph 20 Judge Berner concluded:

> I therefore have to consider if the Penalty Notice in this case is saved from invalidity by s 114 TMA. In order to be saved I have to be satisfied that it is "in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts". I am not so satisfied. A penalty can arise only on the failure of a person to comply with a s 19A notice within due time. The due time is therefore one of the substantive bases for the imposition of a penalty. As s 19(10) provided for a specific time for compliance with the s 19A Notice in this case, a Penalty Notice that failed to record that time correctly cannot in substance and effect conform with or accord to the intent and meaning of the Taxes Acts.

34. In considering whether the letter of 17 January 2011 to the Appellant purported to be made pursuant to Section 9A TMA 1970, we considered what was necessary for a valid notice of enquiry. We concluded at paragraph 25 above that the specific return into which the enquiry is made is an essential part of the notice and must be stated. Looking at the disputed notice of enquiry here, the return which was described in the letter of 17 January 2011 does not exist.

35. The Respondents argued that the error was so minor that there could not have been any confusion as to the return which was intended in the letter of 17 January 2011. The Appellant was present during the hearing but, as the parties were agreed on the essential facts, we did not hear any evidence as to his understanding of the disputed notice. We note that at the time the letter of 17 January 2011 was sent, no other tax return of the Appellant's had been filed. Mr Gordon suggested that position might not have been so clear to the Appellant, as he would have signed off his return for the year ended 5 April 2010 before his advisors filed it and so it might have been the case that the Appellant had in fact signed the return for the year ended 2010 before receiving the letter dated 17 January 2011. Without any evidence we can make no findings as to the Appellant's understanding. However, it is clear from *Baylis v Gregory* that the taxpayer's understanding is irrelevant if the assessment (or, in this case, the notice of enquiry) is not worded correctly. At 437E Slade LJ held:

> The judge took the view that section 114 will enable an assessment expressed to be for one year to be treated and take effect as an assessment for another year provided that the Crown can show that there was a genuine mistake and that in all the circumstances there was no real

possibility that the taxpayer was in any way misled. While I again have some sympathy with this view, which was supported by Mr Sher in this court by way of alternative submission, I do not find myself able to concur in it, since I do not think it is warranted by the wording of the section.

36. Therefore we conclude that the Respondents must be accurate in relation to the essential elements of a notice of enquiry, even if the taxpayer would be capable of discerning the Respondents' true intention despite a minor error. For a notice of enquiry to meet the requirements of Section 9A TMA 1970, the return into which the enquiry will be opened must be stated accurately and with sufficient detail for it to be clear which return is intended. The detail as to the relevant return must be correct.

37. The return which was described in the letter of 17 January 2011 is for a tax year which does not exist. We conclude that the disputed notice of enquiry is not in substance and effect in conformity with the intent and meaning of the Taxes Acts.

Was the Appellant designated in the letter of 17 January 2011 according to common intent and understanding?

38. Although we were addressed on what was meant by common intent and understanding, these submissions appeared to be the basis of the phrase applying to the disputed notice rather than to the person or property affected. In the context of the relevant document being an attempt to open an enquiry into a tax return of the Appellant's, we do not consider that the phrase "person or property charged or intended to be charged or affected" can refer to anyone or thing other than the person whose return it is. We do not consider that "property charged or affected" can be a reference to the tax return itself.

39. On that basis we consider that the person affected – the Appellant – was designated according to common intent and understanding. There was some discussion as to whether "common" meant common to the parties or common to the generality of the populace. Given our conclusion that this part of Subsection 114(1) TMA 1970 refers to how the Appellant was addressed in the disputed notice, it is not necessary to decide between those two options although the former appears more likely given the difficulties of perceiving an intention which is common to the populace as a whole.

40. As there was no error in the name or address of the Appellant in the letter to him dated 17 January 2011, on either interpretation of common intent and understanding we consider that the Appellant was designated in the disputed notice of enquiry according to common intent and understanding.

Conclusion

41. In order for the Respondents to rely upon Section 114 TMA 1970 to cure the error in the letter sent to the Appellant on 17 January 2011, they needed to satisfy us that all four of the requirements in Section 114 were met. Although we are satisfied that three of those requirements are met, we do not agree that the letter of 17 January 2011 was in substance and effect in conformity with or according to the intent and

meaning of the Taxes Acts. The error made resulted in a stated intention to enquire into a tax return for a year which did not exist, and the substance and effect did not conform to the intent and meaning of the Taxes Acts.

42. We conclude that the letter dated 17 January 2011 to the Appellant does not constitute a valid notice of enquiry under Section 9A TMA 1970 into the Appellant's tax return for the tax year ended 5 April 2009. Section 114 TMA 1970 does not apply to save the disputed notice of enquiry. Without a valid enquiry notice, there was no enquiry and the purported closure notice has no standing. Consequentially the Appellant's appeal is allowed.

43. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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.

JANE BAILEY
TRIBUNAL JUDGE

RELEASE DATE: 5 MAY 2016