TC04056

Appeal number: TC/2013/07099

CORPORATION TAX – self assessment – enquiry notice given on anniversary date of day on which return filed – whether notice given within 12 months of day when return filed – meaning of word "from" in para 24(2) Sch 18 FA 1998 – held, "from" excluded day when filed – notice therefore validly given – as a result, taxpayer notice under para 1 Sch 36 FA 2008 validly given as Condition A in para 21(4) fulfilled – appeal dismissed and direction given to supply information as specified in Sch 36 notice

FIRST-TIER TRIBUNAL
TAX CHAMBER

DOCK AND LET LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN CLARK

Sitting in public at 45 Bedford Square London WC1B 3DN on 15 September 2014

Hui Ling McCarthy of Counsel, instructed by Charterhouse (Accountants) LLP, for the Appellant

Paul Reeve, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant ("Dock and Let") appeals against a notice issued by the Respondents ("HMRC") under Schedule 36 of the Finance Act 2008, following a notice issued under paragraph 24 of Schedule 18 to the Finance Act 1998. I refer in this decision to these respective Schedules as "Schedule 36" and "Schedule 18".

The facts

2. The facts were not in dispute. On 31 January 2012 Dock and Let filed its self assessment return for the accounting period ended 31 March 2011. This was confirmed by the "Gateway time stamp", which showed the time as 14.30.35.

3. On 31 January 2013, HMRC issued a notice (delivered by hand to the registered office of Dock and Let) under paragraph 24 of Schedule 18, to enquire into the tax return of Dock and Let for the accounting period ended on 31 March 2011.

4. On 7 February 2013, Charterhouse (Accountants) LLP ("Charterhouse Accountants"), the advisers to Dock and Let, wrote to HMRC stating that HMRC were out of time to enquire into the CT600 return for the year ended 31 March 2011, as the deadline for issuing the notice of enquiry had expired on 30 January 2013.

5. On 26 March 2013 HMRC wrote to Charterhouse Accountants; in HMRC's view, the twelve month period commenced on the day after the return was filed, so that in the present case, the 12 month period started at 00.00 on 1 February 2013 and ended at midnight on 31 January 2013. HMRC therefore considered that there was a valid enquiry for the accounting period ended 31 March 2011.

6. On 18 July 2013 HMRC wrote to Charterhouse Accountants to inform them of the intention of the HMRC Officer, Mrs Alderson, to issue an information notice under paragraph 1 of Schedule 36. This would permit Dock and Let to appeal against the notice, following which the matter could be reviewed and possibly considered by the tribunal.

7. On the same date, Mrs Alderson issued the Schedule 36 notice to Dock and Let. This notice was in almost identical terms to those of the notice under paragraph 24 of Schedule 18 delivered to Dock and Let on 31 January 2013.

8. On 31 July 2013 Charterhouse Accountants wrote to HMRC to appeal against the Schedule 36 notice, on the grounds of the continued belief that the Schedule 18 Notice originally issued to Dock and Let had been out of time. They requested an independent review.

9. On 6 August 2013 Mrs Alderson wrote to Dock and Let pursuant to s 49B(2) of the Taxes Management Act 1970 to inform it of HMRC's view. This was that her enquiry into the tax return for the accounting period ended on 31 March 2011 was valid and had not been completed. As a result, she was permitted under paragraph 21

of Schedule 36 to issue a notice under paragraph 1 of Schedule 36, because Condition A in paragraph 21(4) was satisfied.

10. On 16 September 2013 Mrs Jessop, the Review Officer for HMRC in the present case, wrote to Dock and Let with the results of her review. Her conclusion was that the decision summarised in Mrs Alderson's letters of 26 March and 6 August 2013 should be upheld; the enquiry notice had been given within the statutory time limit, and thus there was an open enquiry into the return, so that the Schedule 36 notice fulfilled the appropriate condition. (Mrs Jessop considered another condition in paragraph 21 of Schedule 36; I refer to this below.)

11. On 11 October 2013 Charterhouse Accountants gave Notice of Appeal to HM Courts and Tribunals Service.

The law

12. Paragraph 24 of Schedule 18 states:

> "**24**—
>
> (1) an officer of Revenue and Customs may enquire into a company tax return if they give notice to the company of their intention to do so ("notice of enquiry") within the time allowed.
>
> (2) If the return was delivered on or before the filing date, notice of enquiry may be given at any time up to twelve months from the day on which the return was delivered (subject to sub-paragraph (6)).
>
> (3) If the return was delivered after the filing date, notice of enquiry may be given at any time up to and including the 31st January, 30th April, 31st July or 31st October next following the first anniversary of the day on which the return was delivered.
>
> (4) If the company amends its return, notice of enquiry may be given at any time up to and including the 31st January, 30th April, 31st July or 31st October next following the first anniversary of the day on which the amendment was made.
>
> (5) A return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) by the company of its return.
>
> (6) In the case of a company which is a member of a group other than a small group, the 12-month period in sub-paragraph (2) shall start not from the day on which the return was delivered but from the filing date.
>
> (7) In sub-paragraph (6) "group" and "small group" have the same meaning as in sections 474(1) and 383 of the Companies Act 2006."

13. The relevant paragraphs of Schedule 36 are the following:

> "**1**—

(1) An officer of Revenue and Customs may by notice in writing require a person ("the taxpayer")—

(a) to provide information, or

(b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

(2) In this Schedule, "taxpayer notice" means a notice under this paragraph."

"**21**—

(1) . . .

(2) Where a person has made a tax return in respect of a chargeable period under paragraph 3 of Schedule 18 to FA 1998 (company tax returns), a taxpayer notice may not be given for the purpose of checking that person's corporation tax position in relation to the chargeable period.

(3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.

(4) Condition A is that a notice of enquiry has been given in respect of—

(a) the return, or

(b) a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates ("relevant tax"),

and the enquiry has not been completed.

. . ."

Arguments for Dock and Let

14. Miss McCarthy's arguments, with which I deal in detail below, may be summarised as follows:

(1) In contrast to HMRC's submissions, the 12 months specified in paragraph 24(2) of Schedule 18 included the date on which the return was delivered;

(2) The cases cited by HMRC made clear that whilst certain general rules of thumb could be extracted from the authorities, the correct construction in any given case was a question of construction of the document or statutory provision in question. In particular, any general rule which could be derived from the authorities was displaced where the contrary appeared from the context (Winn J in *Hare v Gocher* [1962] 2 QB 641 at 646);

(3) The wording of paragraph 24(2) had to be considered in the context of the rest of paragraph 24;

(4) Two rules of construction had to be borne in mind. The first was the presumption against doubtful penalisation. Secondly, a subject should only be taxed "on clear words" (*WT Ramsay v IRC* [1982] AC 300 at 323, *Ingram v IRC* [1997] 4 All ER 395 at 414);

(5) There was nothing to prevent HMRC from opening an enquiry into a return on the day on which it was filed. It followed that it must be right for the day on which the return was delivered to be included in the 12 month period for opening an enquiry;

(6) The interpretation adopted by Dock and Let was consistent with paragraph 24(6) of Schedule 18;

(7) The difference between the words of paragraph 24(2) and 24(3) was taken into account by that interpretation;

(8) If that interpretation was correct, it was common ground that Condition A in paragraph 21(4) or Schedule 36 was not satisfied. Accordingly, the Schedule 36 notice could not have been validly issued on that basis;

(9) Dock and Let had a very real interest in respect of the Schedule 36 notice, as dealing with enquiries was time consuming and costly, with no ability to recover the advisers' costs. Miss McCarthy referred to *R (oao Derrin Brother Properties Limited) v Revenue and Customs Commissioners* [2014] EWHC 1152 (Admin) at [71];

(10) The reason for the existence of the 12 month enquiry window was the need for certainty. That period was very generous. If there was any uncertainty at all in construction of the legislation, that uncertainty needed to be resolved in the taxpayer's favour.

Arguments for HMRC

15. Mr Reeve stated that HMRC completely disagreed with the view of Dock and Let and its advisers. In the next section of this decision I deal in full with his arguments, which in summary were:

(1) The enquiry notice was issued within 12 months from the filing date of 31 January 2012, as required by the legislation;

(2) The question whether "from" a specified day included or excluded the specified day had been considered in *South Staffordshire Tramways Co v Sickness and Accident Assurance Association* [1891] 1 QB 402;

(3) The case of *Zoan v Rouamba* [2000] 1 WLR 1509, [2000] 2 All ER 620, had reviewed the relevant case law on this issue. It concluded that where the legislation provided that something was to be done with a fixed period of time "from" a specified date, that date was generally excluded from the reckoning;

(4) HMRC contended that "from", in the context of calculating the duration of the enquiry window, meant "after", so that the period in which HMRC must give notice commenced on the day after the return was submitted and ended 12

months later, namely the exact 12-month anniversary of the date on which the return was submitted. Thus in the present case the enquiry period commenced at 00.00 on 1 February 2012 and ended at midnight on 31 January 2013. As HMRC's enquiry notice had been hand delivered during working hours on 31 January 2013, the enquiry notice was valid;

(5) In considering the construction of the legislation, the question of the time limit in paragraph 24(2) of Schedule 18 had to be considered in the wider context of the other references to time limits in the rest of Schedule 18;

(6) The legislation was perfectly clear. The word "from" had its everyday meaning, akin to "after", as referred to in insurance and similar cases;

(7) Contrary to the submissions for Dock and Let, the length of the enquiry window was not 12 months. It was 12 months plus the rest of the day on which the return was filed. Paragraph 24(2) did not say that the enquiry period lasted for 12 months. It was incorrect to confuse the time limit with the enquiry window;

(8) HMRC contended that the Schedule 36 information notice was valid, because Condition A in paragraph 21(4) of Schedule 36 had been satisfied;

(9) Thus both the enquiry notice and the Schedule 36 notice were valid;

(10) Mr Reeve requested the Tribunal to find that the enquiry notice had been validly given within the time limit. In relation to the Schedule 36 notice, he asked the Tribunal to confirm that Condition A in paragraph 21(4) of Schedule 36 was satisfied and to direct that Dock and Let should provide information in accordance with the notice.

Reply for Dock and Let

16. Miss McCarthy submitted that the insurance cases made clear that the meaning of the word "from" depended on the context. Even in *Zoan*, where the court had accepted that the day in question was to be excluded, it had referred to the approach to be taken in construing such statutory provisions. (I deal in greater detail with this case in the following section of this decision.)

17. No part of HMRC's argument focused on the context. It was necessary to ask why the draftsman had chosen different language in paragraph 24(2) of Schedule 18 from that in the other sub-paragraphs of paragraph 24.

18. In relation to the other provisions of Schedule 18 referred to by Mr Reeve, paragraph 14(1)(a) of Schedule 18 specified the filing date for a company tax return as the last day of the period of 12 months from the end of the accounting period. For example, where the end of the accounting period was the last second of 31 March, the time had to start being calculated from the following day. In contrast, paragraph 24(2) of Schedule 18 did not specify the end of the day as being the starting point.

19. Miss McCarthy re-emphasised the importance of context in construing the word "from" in the legislation; without context, it was not possible to tell the meaning, so context was everything.

Discussion and conclusions

20. Before dealing with the main issue, I need to refer to an alternative submission which had been raised by HMRC concerning the Schedule 36 notice. In the review letter, Mrs Jessop included the following paragraphs after her conclusion that "The enquiry into the return is valid and the information notice should be complied with":

> "Furthermore, as stated above, an open enquiry is only one of the circumstances ("Condition A") under which paragraph 21 of Schedule 36 permits HMRC to issue an information notice. I consider that, even in the absence of an open enquiry, HMRC would have been entitled to issue the notice in this case under at least one of the other conditions.
>
> Although not argued in correspondence, the caseworker could assert that the information notice was also valid as its issue fulfils Condition B at Paragraph 21(6), Schedule 36 FA 2008, as she has reason to suspect an insufficiency in the assessment of tax. HMRC\ may be in a position to make a discovery assessment if there were no open enquiry."

21. Submissions in relation to Condition B were included in Mr Reeve's skeleton argument, and as a result submissions in response were included in Miss McCarthy's skeleton argument. However, before the hearing Mr Reeve gave notice on behalf of HMRC that the arguments in relation to Condition B were no longer to be pursued. At the beginning of the hearing he confirmed that this was the position being adopted by HMRC, as the parties wished to concentrate on the Condition A argument.

22. Miss McCarthy requested that this should be confirmed in writing. I agreed that this should be done by recording the position in this decision. I indicated that the Condition B argument had raised concerns in my mind. In particular, there had been no suggestion in the correspondence that Mrs Alderson had considered, before issuing the Schedule 36 notice, whether she had reason to suspect any of the matters referred to in paragraph 21(6) of Schedule 36. Mrs Jessop's review letter had merely referred to the possibility that Mrs Alderson might have considered Condition B. Evidence would have been necessary in order to show that Mrs Alderson (or some other officer of HMRC) had actually considered Condition B before the Schedule 36 notice was issued. However, in email exchanges before the hearing, Mr Reeve had indicated to Charterhouse Accountants that it was not his intention to call Mrs Alderson to give evidence, although she would be present at the hearing in order to provide information if required concerning the reasons for including specific items in the Schedule 36 notice.

23. In the circumstances, I consider it to be a satisfactory resolution of the issue in the present case for HMRC to have withdrawn their arguments based on Condition B, permitting me to focus solely on Condition A.

24. Both parties accepted that satisfaction of Condition A depended on valid notice of enquiry being given in respect of the tax return of Dock and Let for the accounting period ended on 31 March 2011. The sole challenge to the validity of the Schedule 36

notice was in respect of the date on which that notice was given to Dock and Let by means of a by hand delivery to its registered office at the premises of Charterhouse Accountants. As both parties submitted, this requires consideration of the terms of paragraph 24(2) of Schedule 18.

25. The first question in construing paragraph 24(2) is whether its effect can be discerned by reference to the plain meaning of the words used. On this point it is clear, both from the respective arguments of the parties and from the cases cited in argument, that the word "from" cannot be said to have a plain meaning. There may be general understanding on the part of many people as to the way in which a period "from" a particular date is to be calculated, but this does not automatically provide a guide to the way in which a particular statutory provision is to be interpreted.

26. Thus, although a person whose birthday is on 31 January would be likely to count a period of 12 months from that birthday as expiring on the following 31 January, that does not necessarily assist in deciding the meaning of paragraph 24(2) of Schedule 18.

27. The next question is whether guidance can be obtained from the case law. The parties agreed that the issue in the present case did not appear ever to have been considered by these Tribunals. Any case law is therefore of assistance in general terms only, and will be subject to the question of the particular context of the legislation or documentation in issue. Subject to these potential constraints, I look at the cases referred to by the parties.

28. Mr Reeve referred to the *South Staffordshire* case, in which Day J stated:

> "The first question raised is whether or not November 24, 1888, the day on which this event occurred, is included in the period covered by the policy. The insurance being "for twelve calendar months from November 24, 1887," obviously either November 24, 1887, or November 24, 1888, must be excluded, for otherwise the period covered would exceed twelve calendar months by one day. I decide without hesitation that the former date is excluded and the latter included. If space were in question, and a mile had to be measured "from" a given place, it is obvious that no part of the place could be included in the mile. And, similarly, I cannot but think that, as regards time, "from" is akin to "after," and excludes the date fixed for the commencement of the computation."

29. In *Zoan v Rouamba*, the Court of Appeal considered the case law on the question of the calculation of a period. Chadwick LJ said:

> "23) Where, under some legislative provision, an act is required to be done within a fixed period of time "beginning with" or "from" a specified day it is a question of construction whether the specified day itself is to be included in, or excluded from, that period. Where the period within which the act is to be done is expressed to be a number of days, months or years from or after a specified day, the courts have held, consistently since *Young v Higgon* (1840) 6 M&W 49, that the

> specified day is excluded from the period; that is to say, that the period commences on the day after the specified day. Examples of such an "exclusive" construction are found in *The Goldsmith's Company v The West Metropolitan Railway Company* [1904] 1 KB 1 ("the powers of the company for the compulsory purchase of lands for the purposes of this Act shall cease after the expiration of three years from the passing of this Act") and in *In re Lympe Investments Ltd* [1972] 1 WLR 523 ("the company has for three weeks thereafter neglected to pay"). In *Stewart v Chapman* [1951] 2 KB 792 ("a person ... shall not be convicted unless ... within fourteen days of the commission of the offence a summons for the offence was served on him") Lord Goddard, Chief Justice, observed, at pages 78-9, that it was well established that "whatever the expression used" the day from which the period of time was to be reckoned was to be excluded.
>
> 24) Where, however, the period within which the act is to be done is expressed to be a period beginning with a specified day, then it has been held, with equal consistency over the past forty years or thereabouts, that the legislature (or the relevant rule making body, as the case may be) has shown a clear intention that the specified day must be included in the period. Examples of an "inclusive" construction are to be found in *Hare v Gocher* [1962] 2 QB 642 ("if within [the period of two months beginning with the commencement of this Act] the occupier of an existing site duly makes an application ... for a site licence") and in *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 ("a writ ... is valid ... for 12 months beginning with the date of its issue"). As Lord Justice Salmon pointed out in *Trow v Ind Coope*, at page 923, the approach adopted in the *Goldsmith's Company* case and *Stewart v Chapman* can have no application in a case where the period is expressed to begin on the specified date. He observed, at page 924, that "I cannot ... accept that, if words are to have any meaning, `beginning with the date of its issue' can be construed to mean the same as `beginning with the day after the date of its issue'".”]

30. In *Zoan*, the legislation considered by the Court of Appeal exempted agreements under which the maximum number of payments was four, and those payments were required to be made

> “within a period not exceeding 12 months beginning with the date of the agreement.”

The agreement provided that the hire charges could remain outstanding “until a date on or before 12 months after the date of this Agreement”, and that the hire charges together with interest were to become due and payable by the hirer upon the earliest of a list of events, the relevant one being “the first anniversary of this Agreement”.

31. The Court of Appeal concluded that the agreement fell outside the exemption. In arriving at that conclusion, the distinctions set out in the case law referred to in the two paragraphs cited above were applied. The agreement was to be construed as excluding the date on which it had been entered into, but the terms in which the legislation was expressed required the twelve month period to be counted by including the date on which the agreement had been entered into.

32. Adoption of the approach taken by the Court of Appeal in *Zoan* would lead to the conclusion, as submitted by Mr Reeve, that the word "from" in paragraph 24(2) of Schedule 18 requires the twelve month period to be counted by excluding the date on which the return was submitted. However, it is necessary to consider whether there is anything which would lead me to construe paragraph 24(2) in a different way.

33. Miss McCarthy referred to *Hare v Gocher* as supporting the contention that the general approach as adopted in cases such as the *Goldsmiths' Co* case (cited by Chadwick LJ in *Zoan*, see above) was subject to any contrary intention appearing from the context.

34. In his judgment in *Hare v Gocher*, Winn J referred at pp 645-646 to the *Goldsmiths' Co* case:

> "Collins M.R. and Mathew LJ both make it clear that in their judgment the general rule, if any, to be applied, as from the date of that decision, to the construction of such words, subject to controlling terms which would indicate a contrary intention, is that the first day of the period referred to should be excluded in the computation."

He continued:

> "There are later decisions, which I think it is unnecessary to consider for the purposes of this judgment, so I pass at once to emphasise that in this case on has the words "beginning with the commencement of this Act". It is submitted by Mr Boreham, for the prosecutor, as I think correctly, that these words are to be taken to have been adopted in order to avoid equivocation, and to exclude the application for the purposes of this statute of the rule which in the *Goldsmiths'* case was said to be the general rule in so far as any general rule could be accepted as existing."

35. In referring to contrary intention, Winn J appears to have been referring to the use of the alternative approach of stating that the period in question should "begin with" the specified date; the judgments in the *Goldsmiths' Co* case are brief, and do not discuss the position in detail. The difference between the respective approaches has since been examined in greater detail by the Court of Appeal in *Zoan*. However, as Miss McCarthy argued that context needed to be considered, I turn to her analysis of the way in which paragraph 24(2) of Schedule 18 fits in with the rest of paragraph 24.

Miss McCarthy's arguments on paragraph 24

36. Miss McCarthy commented that paragraph 24 included the words or phrases "within", "up to", "up to and including", and "start . . . from . . ." She argued that the combination of these different concepts made paragraph 24(2) highly ambiguous when read with the remaining sub-paragraphs of paragraph 24.

37. In her submission, paragraph 24(1) of Schedule 18 emphasised that HMRC did not have general powers of enquiry; they could only pursue an enquiry if they gave notice within the time allowed.

38. Paragraph 24(3) made clear that where a return was delivered after the filing date, the quarter date following the first anniversary of delivery of the return was the date on which the period for giving notice of enquiry expired. She drew attention to the words ". . . next following the first anniversary . . ." If one wanted to focus on the anniversary, it would have been entirely straightforward to draft the provision to include the anniversary.

39. If this had been how paragraph 24(2) was worded, so that notice could be given at any time up to and including the first anniversary of the date on which the return had been delivered, it would have been crystal clear that 31 January was included.

40. Miss McCarthy commented that where counsel referred to other sections in considering the construction of a provision, those other sections were usually in different parts of the legislation. Here, the draftsman had deliberately chosen different language within different sub-paragraphs of the same paragraph.

41. In her submission, the use in paragraph 24(2) of the words "at any time up to twelve months . . ." meant that twelve months was the outside limit. It was clear that HMRC were not to have more than twelve months to enquire into a return; they had "up to twelve months". If HMRC's construction were right, by definition they would have a few hours over twelve months every single time that they sought to open an enquiry on the anniversary date. Bearing in mind that the whole of paragraph 24 of Schedule 18 was drafted restrictively, curtailing HMRC's rights to open an enquiry, the one construction which could not be right was the one which gave HMRC more than twelve months.

42. The wording of paragraph 24(4) was similar to that of paragraph 24(3). Paragraph 24(5) limited HMRC's powers by stating that there could be only one enquiry into a return (except where a company amended its return).

43. Paragraph 24(6) was important; it altered the timing of the operation of paragraph 24(2) where a company was a member of a group other than a small group. It was common ground that paragraph 24(6) did not apply in the present case, as Dock and Let was a member of a small group. In terms of drafting, paragraph 24(6) stated that the period of twelve months in paragraph 24(2) was to start not from the date of delivery but from the filing date.

44. Miss McCarthy submitted that paragraphs 24(2) and 24(6) needed to be read consistently with each other. They identified the twelve month period starting from the day on which the return was delivered. She argued that construction fixed the start date as the day on which the return was delivered. The purpose of paragraph 24(6) was to give more time for enquiries into the tax affairs of a company within a group. Thus if a company was not in a small group, and delivered its return on time, then HMRC always had twelve months. If it was accepted that the starting date under

paragraph 24(6) was the filing date, it could not possibly be that the starting date under paragraph 24(2) was the day after. If a return was delivered on the filing date, a company in a large group would have a longer enquiry. If starting from the delivery date meant day 1, starting from the delivery date meant that the delivery date was day 1 of the period to be counted.

HMRC's arguments on paragraph 24

45. Mr Reeve argued that there was nothing in the legislation to indicate that the delivery date of the return was day one of the period referred to in paragraph 24(2) of Schedule 18. HMRC submitted that the enquiry had been opened in time. The first day of the twelve month countdown in paragraph 24(2) was the next day. Thus the period started on 1 February 2012, and ended at 23.59 on 31 January 2013. Both parties were relying on non-tax cases as authorities on the construction of the legislation.

46. HMRC submitted that the word "from" in paragraph 24(2) was akin to "after", as referred to by Day J in the *South Staffordshire* case. Mr Reeve referred to the paragraphs of the judgment of Chadwick LJ in *Zoan* cited above. HMRC argued that "from", in the context of calculating the duration of the enquiry window, meant "after". As a result, the enquiry had been opened in time.

47. The reason for the question not having previously been raised on appeal to the Tax Tribunals was that the reading of the provision was clear. This had always been HMRC's view. This was established practice both for filing and notice.

48. If this was not the true construction of the provision, Mr Reeve questioned why the view had not previously been challenged. He asserted that all other accountants and tax advisers read the legislation in this manner every day. If 100 people were asked when the period of twelve months from 31 January 2012 expired, they would all give the same answer, that it expired on 31 January 2013. This followed the everyday meaning of the words. Dock and Let would like the position to be otherwise, but this was simply not the true construction to be applied to paragraph 24(2).

My provisional conclusion on the construction of paragraph 24

49. The starting point in construing a particular statutory provision is to look at that provision on its own and to attempt to construe it as it stands. If a definitive construction can be determined in this way, questions as to the wider context are less relevant, but may still assist in testing whether that construction is truly definitive.

50. The use of the words "at any time up to twelve months from the day on which the return was delivered . . ." needs to be analysed consistently with the general approach to construction considered by the Court of Appeal in *Zoan*, which reviewed a long series of authorities on the construction of similar provisions. My provisional conclusion is that the word "from" is, as submitted by HMRC, akin to "after". However, this is subject to further questions, both as to the context of the legislation, and as to other general principles referred to by Miss McCarthy in her submissions.

51. The immediate context of paragraph 24(2) is the remainder of paragraph 24 of Schedule 18. Miss McCarthy sought to distinguish between the language used in paragraph 24(3) ("at any time up to and including . . . next following the anniversary of the day . . .") and that in paragraph 24(2). I therefore consider an alternative hypothesis.

52. If Dock and Let had not submitted its return for the accounting period ended 31 March 2011 until later than twelve months from the end of that period, say on 15 April 2012, the last date for HMRC to give notice of enquiry would have been 30 April 2013. This gives a longer enquiry window than twelve months from the date of delivery of the return. Thus a company which submits its return after the filing date puts itself at a disadvantage. The circumstances are different from those of a company which files its return on or before the filing date, and therefore the language used in paragraph 24(3), framed differently from that in paragraph 24(2), is of limited assistance in construing the different language used in paragraph 24(2).

53. As the language used in paragraph 24(4) is similar to that in paragraph 24(3), my view is the same in relation to paragraph 24(4).

54. Miss McCarthy submitted that paragraph 24(6), although not applicable to Dock and Let because it was a member of a small group, was of assistance in considering the context in which paragraph 24(2) appeared. I am not convinced by this submission. What paragraph 24(6) does is to modify the operation of paragraph 24(2). Instead of the notice period being "at any time up to twelve months from the day on which the return was delivered", it is changed by paragraph 24(6) to "at any time up to twelve months from the filing date". This raises exactly the same question as that raised in the present appeal; where paragraph 24(6) applies, should the twelve month period include the filing date, or should the first day of the twelve months be the day after the filing day? The words used in paragraph 24(6) are "start from", and not start with"; there is a material difference, despite Miss McCarthy's submission that "starting from" was analogous to "beginning with", which I do not find persuasive.

55. In any event, it is debatable whether paragraph 24(6) can be used as an aid to the construction of paragraph 24(2). In paragraph 24 as originally enacted, sub-paragraphs (6) and (7) did not appear, and the wording of paragraph 24 was different:

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

That original wording was similar to the effect of paragraph 24(6); the position was that in all cases where the return had been delivered on time or before the due date, the period was to be calculated from the filing date. As indicated above, if the argument in the present appeal had been raised in the context of paragraph 24(2) as originally enacted, the question would have been exactly the same.

Wider questions of construction

56. Both Miss McCarthy and Mr Reeve raised questions concerning the wider context in which paragraph 24(2) should be construed. Miss McCarthy also argued that broader principles of construction should additionally be applied.

57. Mr Reeve referred to the filing requirements set out in paragraph 14 of Schedule 18. In each sub-paragraph of paragraph 14, the filing day was the last day of the relevant period, in each case being a period "from" a particular point in time or event. In relation to paragraph 14(1)(a), which specified the date as twelve months from the end of the period for which the return was made, HMRC had always taken the filing date as being the anniversary of the end date of the accounting period. As far as enquiries were concerned, HMRC read the legislation in exactly the same way, thus being consistent in their approach to the legislation on both subjects.

58. Schedule 18 contained other time limits for the following situations:

(1) amendment of a tax return by a company;

(2) correction of a return by HMRC;

(3) determinations of tax payable;

(4) general time limits for assessments;

(5) time limits for appeals.

59. Mr Reeve submitted that the same rule was followed both by the professions and by HMRC. There were no differences to the contexts in which these various provisions appeared. There was no need to find in favour of Dock and Let. The twelve month period must surely start on the day after the filing date. HMRC had been utterly consistent in their approach. This made HMRC's enquiry valid.

60. Miss McCarthy argued that there was a difference between paragraph 14(1)(a) of Schedule 18 and paragraph 24(2). In relation to the filing date, the twelve month period was calculated "from the end of the period". Thus, taking as an example an accounting period ending on 31 March, from the last second of 31 March one had to start counting from the day after. In contrast, paragraph 24(2) did not specify the end of the day as being the starting point.

61. I accept that notionally an accounting period ends on the last second of the final day of that period. However, accounting periods are defined in terms of whole days. If an accounting period ends on 31 March, the twelve month period under paragraph 14(1)(a) is calculated "from" 31 March. The word "from" is used here in the sense of "after", and thus the filing period expires on the following 31 March.

62. Caution is necessary in considering submissions based on what is considered to be the accepted view of professions or on the view taken by HMRC. Accepted interpretations may well be found by the tribunals or the courts to be erroneous. Whatever may be stated to be the accepted view, I have to answer the question raised by Dock and Let on the basis of proper principles of statutory interpretation.

63. Miss McCarthy referred in her submissions to wider principles of statutory interpretation. I have already referred to the question of plain meaning; I accept her submission that the word "from" is equivocal. Her second principle was that the language of the provision in question had to be considered in its context; I have referred to this already.

64. The third principle was the presumption against doubtful penalisation, as referred to in Bennion on Statutory Interpretation (6th edn, 2013), Code S271, p 749. Miss McCarthy referred to *ESS Production Ltd (in administration) v Sully* [2005] EWCA Civ 554 at [78], and to *Goare, Allison & Associates Inc v The Queen* [2009] DTC 653. A further principle was that a subject should only be taxed "on clear words", as shown by *WT Ramsay v IRC* [1982] AC 300 at 323, and *Ingram v IRC* [1997] 4 All ER at 414 (Evans LJ). Any ambiguity in paragraph 24(2) should therefore be resolved in favour of Dock and Let.

65. Miss McCarthy referred to the detriment arising as a result of a Schedule 36 enquiry; the costs would not be recoverable, and the pursuit of an enquiry involved some element of invasion of privacy, as referred to in Bennion, Code S 280. That detriment had to be taken into account in construing the legislation. She cited the judgment of Simler J in *Derrin Brother Properties* at [71] concerning interference with privacy and confidentiality rights, but not amounting to a breach of Article 8 rights.

66. Miss McCarthy submitted that in the light of the detriment to a taxpayer resulting from involvement in a Sch 36 enquiry and the interference with Article 8 rights which such an enquiry constituted, paragraph 24(2) of Sch 18 should be construed restrictively to limit the extent to which HMRC could pursue an enquiry. She referred to *Lester v Garland* (1808) 15 VES Jun. 248, (1808) 33 ER 748 at 749-750 and 751-752. Sir William Grant MR indicated that it was not necessary to lay down any general rule; the construction to be applied depended on the language of the provision being considered.

67. I accept that Article 8 rights may be interfered with as a result of a Sch 36 enquiry or an enquiry raised under paragraph 24(2) of Sch 18. However, the position concerning a Sch 36 enquiry was considered by Simler J in *Derrin Brother Properties* at [72], in which she said:

> "So to the extent that Sch. 36 notices interfere with rights of privacy, such interference will be justified where the notice is issued according to law, in pursuance of a legitimate aim, and necessary in a democratic society for protecting the taxation system and revenue."

The fact that an enquiry may interfere with a person's Article 8 rights does not assist in answering the question whether the enquiry notice was "issued according to law", ie was validly issued within the time provided for by the legislation in question.

68. In the same way, the detriment arising from an enquiry is clearly regarded as permissible in the context of protecting the taxation system and the revenue. The question of the validity of the notice in accordance with the law is not answered by

considering the detriment, as that detriment is regarded as acceptable where the notice is given within the required time, but unacceptable where it is not. Reference to the detriment merely begs the question raised by this appeal.

69. In relation to her argument based on *Ramsay*, I am not persuaded that the reference to being taxed "on clear words" can be extended to matters relating to enquiries. What is under examination is whether HMRC have the power to pursue an enquiry in circumstances where they have given notice of enquiry on the anniversary date of the filing of the return. Instead of considering the extent of the power to tax, the exercise by HMRC of their enquiry power should be examined by reference to the issues which I have just considered in the preceding paragraphs.

70. Miss McCarthy argued that the construction placed on the legislation by HMRC had the effect of allowing HMRC more than twelve months to pursue an enquiry. I have already mentioned that there are circumstances where the duration of the period during which an enquiry can be given exceeds twelve months, in particular under paragraphs 24(3) and 24(4) of Sch 18. Apart from this, the following comments of Sir William Grant MR in *Lester v Garland* at 33 ER p 752 indicate that fractions of a day are to be ignored:

> "It is not necessary to lay down any general rule upon this subject : but upon technical reasoning I rather think, it would be more easy to maintain, that the day of an act done, or an event happening, ought in all cases to be excluded, than that it should in all cases be included. Our law rejects fractions of a day more generally than the civil law does. (See the note, 14 Ves. 554, where it is admitted in bankrupty.) The effect is to render the day a sort of indivisible point; so that any act, done in the compass of it, is no more referrible to any one, than to any other, portion of it ; but the act and the day are co-extensive ; and therefore the act cannot properly be said to be passed, until the day is passed. This reasoning was adopted by Lord Rosslyn and Lord Thurlow in the case before mentioned of *Mercer v. Ogilvie*. The ground, on which the judgment of the Court of Session was affirmed by the House of Lords, is correctly stated in the fourth volume of the Dictionary of the Decisions of the Court of Session. In the present case the technical rule forbids us to consider the hour of the testator's death at the time of his death; for that would be making a fraction of a day. The day of the death must therefore be the time of the death ; and that time must be past, before the six months can begin to run. The rule, contended for on behalf of the Plaintiffs, has the effect of throwing back the event into a day, upon which it did not happen ; considering the testator as dead upon the 11th, instead of the 12th, of January; for it is said, the whole of the 12th is to be computed as one of the days subsequent to his death. There seems to be [258] no alternative but either to take, the actual instant, or the entire day, as the time of his death ; and not to begin the computation from the preceding day."

Grant MR continued by stating that it was not necessary to lay down any general rule; the more recent case law, as referred to in *Zoan*, gives general guidance, subject to any contrary approach required to be derived from the legislative context.

71. It would be impractical to count part days in the present context. A return could be filed (as here) at 14.30 on the day, but with the availability of electronic filing, there is nothing in theory to preclude a taxpayer from filing a return at 23.59 on the day in question. There is no practical difference in the latter case from the argument put by Miss McCarthy that under paragraph 14(1) (a) of Sch 18, the period of twelve months was to be counted from the end of the period.

72. I am satisfied that the proper construction of paragraph 24(1) of Sch 18 is that the twelve month period "from the day on which the return was delivered" is to be calculated by excluding the day on which the return was filed, in other words that, as Mr Reeve submitted, "from" is akin to "after". As the notice was delivered to the registered office of Dock and Let on 31 January 2013, it was served within twelve months, and was therefore validly given by HMRC. It follows that the enquiry in respect of the accounting period ended 31 March 2011 was validly opened, and that that notice was effective. It also follows that the Sch 36 notice given to Dock and Let on 18 July 3013 met Condition A in paragraph 21(4) of Sch 36, and was also valid. I therefore dismiss the appeal of Dock and Let against the decision by HMRC in their letter date 18 July 2013 to issue the Sch 36 notice. I direct that Dock and Let shall within 42 days from the date of the release of this decision provide to HMRC the information and documents specified in the Sch 36 notice.

73. In arriving at my decision to dismiss the appeal, I feel it appropriate to comment on the events leading to the appeal. It appears from both notices that in relation to one heading, Director's pension provision, HMRC were considering the deduction for earlier periods. I accept that the remaining items covered by the January 2013 enquiry notice may well have been unconnected with earlier periods, but I find it surprising that HMRC left it to the very last minute to issue the enquiry notice, to the point where it was necessary to deliver the notice and covering letter by hand to the registered office of Dock and Let. The question raised by this appeal would not have arisen if the notice had been given before the last available day.

74. I would also comment that, at least in relation to Director's pension provision, Dock and Let must have been aware of the possibility that an enquiry notice might be issued by HMRC. Thus, contrary to the way in which some of the arguments for Dock and Let seemed to have been framed, the notice cannot be described as having come altogether "out of the blue". The only basis for challenging it was the date on which the notice was given; my conclusion is that it was given in time.

Outcome of the appeal

75. The appeal of Dock and Let is dismissed. I direct that Dock and Let shall within 42 days from the date of the release of this decision provide to HMRC the information and documents specified in the Sch 36 notice.

Right to apply for permission to appeal

76. 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.

JOHN CLARK
TRIBUNAL JUDGE

RELEASE DATE: 8 October 2014