Neutral Citation: [2024] UKFTT 00118 (TC)

Case Number: TC09060

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/01342

INCOME TAX – application for closure notice – validity of enquiry – application for disclosure

Heard on: 5 December 2023
Judgment date: 27 September 2024

Before

TRIBUNAL JUDGE MCGREGOR

Between

JOSEPHINE MARY HAYES

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Josephine Mary Hayes

For the Respondents: Jordan Ness, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) by the Tribunal video hearing system. A face to face hearing was not held because a remote hearing was appropriate. The documents to which I was referred are a hearing bundle of 189 pages.

2. This reviewed decision also takes into account written submissions, of 10 pages from the appellant and 9 pages from the respondent, which were invited by the Tribunal in the course of a review under rule 41 of the Tribunal Procedure Rules, SI 2009/273.

3. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

4. This decision concerns an application made by Ms Hayes to require HMRC to close the enquiry into her 2019/20 tax return.

BACKGROUND FACTS

5. The following background facts are not in dispute:

   (1) A notice to file a tax return for the tax year 2019/20 was issued to Ms Hayes on 6 April 2020;

   (2) Ms Hayes submitted her tax return for the year 2019/20 on 28 February 2021;

   (3) On 7 March 2022, HMRC sent a letter to Ms Hayes stating that they were opening an enquiry into her 2019/20 tax return;

   (4) On 3 March 2023, Ms Hayes made the application being dealt with in this decision.

LAW

6. The deadline for submitting a tax return is set out in Section 8 Taxes Management Act 1970 ('TMA 1970'). After setting out the obligation to make a return in subsection (1), the section goes on:

> "(1D) A return under this section for a year of assessment (Year 1) must be delivered—
>
> (a) in the case of a non-electronic return, on or before 31st October in Year 2, and
>
> (b) in the case of an electronic return, on or before 31st January in Year 2."

7. That deadline can be extended in certain circumstances, including where notice to file was not issued by a certain time limit, but these statutory extensions are not relevant to this case.

8. The consequences of failing to meet the deadline for submitting the return include:

   (1) The charging of penalties for late filing under Schedule 55 to Finance Act 2009; and

   (2) The extension of time to open an enquiry.

9. Section 9A TMA 1970 provides the time limits for HMRC to open an enquiry into a self-assessment tax return:

> "9A(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.
>
> 9A(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;
>
> (b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
>
> (c) if the return is amended under section 9ZA of this Act, up to and including the quarter day next following the first anniversary of the day on which the amendment was made.
>
> For this purpose the quarter days are 31st January, 30th April, 31st July and 31st October."

10. Section 118(2) TMA 1970 provides as follows:

> "For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

PARTIES ARGUMENTS

11. Ms Hayes core submissions were:

(1) the enquiry is not valid because it was opened late;

(2) HMRC was heavy handed and unreasonable in the extent of the requests for information that were made; and

(3) That HMRC should disclose why they picked her return for an enquiry.

12. On the question of validity of enquiry, Ms Hayes submits as follows:

(1) Section 118(2) of TMA 1970 deems her not to have failed to submit her return because further time was allowed by HMRC;

(2) An email from HMRC on 26 January 2021 should be interpreted either as:

(a) Deeming her to have filed her return by 31 January 2021, or

(b) Deeming the filing date to have been moved to 28 February 2021;

(3) Therefore HMRC cannot rely on the extension of time in section 9A(2)(b) because that is predicated on the return having been filed late, which it was not.

13. On the application of the decision in *Raftopouolou* [2018] EWCA Civ 818, Ms Hayes submits that:

(1) The comments regarding section 118(2) of the decision in that case were obiter dicta;

(2) The statements in paragraph 68 of the decision of Richards LJ, in which he expressed the improbability of section 118(2) granting a general time extension power, were limited to the second part of section 118(2), which concerns only the interpretation of reasonable excuses;

(3) Therefore the first half of section 118(2) should, applying the principles set out in *Marshall v Kerr* [1995] 1 AC 148, be given its ordinary and natural meaning, consistent so far as possible with the policy of the Act and the purposes of the provisions so far as such policy and purposes can be ascertained. If such construction would lead to injustice or absurdity, the application of the statutory fiction should be limited to the extent needed to avoid such injustice or absurdity, unless such application would clearly be within the purposes of the fiction;

(4) The phrase "required to be done" in section 118(2) applies to enable HMRC to extend time in cases of a mandatory requirement, such as the present case;

(5) The ordinary and natural meaning of the first part of section 118(2) is that HMRC, the tribunal or an officer has power to allow further time for performing a mandatory act, i.e. filing a tax return. This was not the issue in Raftopoulou and it should be distinguished;

(6) HMRC did allow further time to an indefinite number of taxpayers for filing their tax returns, and the effect was that they were deemed to have filed in time and there is no injustice or absurdity in this result, since it only meant that HMRC had 11 months instead of 12 in which to decide whether to open an enquiry.

(7) The absurdity would only be introduced by HMRC allowing a wide group of taxpayers to file in February and then saying that filing in February was not allowed, in other words was a default, for the purposes of considering when an enquiry could be opened. This turned an “apparently helpful invitation into a trap”.

(8) Although Richards LJ stated that the issue on interpretation of section 118(2) was fully argued, they were apparently not taken to section 106F of TMA 1970, which refers to circumstances where “a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer”. This shows that Parliament contemplated that section 118(2) itself conferred power on HMRC to extend time and that is a strong reason for concluding that insofar as *Raftopoulou* indicates otherwise it was per incuriam.

14. Further, Ms Hayes submits that the 12 month time limit is a safeguard for taxpayers, to ensure the enquiries are executed on a timely basis. Taxpayers should not be penalised for HMRC’ delay in raising the enquiry. If the email did not extend the time limit, then HMRC has created a trap for taxpayers while appearing to be offering to help.

15. With regards to the extent of requests for information, Ms Hayes submits that:

(1) the list of documents requested by HMRC, including all business accounts and credit card statements, amounts to an extremely intrusive enquiry requiring her to disclose all of her financial affairs;

(2) the request is not justified by the reasons given by HMRC, namely:

(a) fluctuation of income cannot be a reason for an enquiry where barristers are concerned because their income always fluctuates;

(b) repairs and renewals are always allowed for barristers and there is no basis for claiming it is high; and

(c) business expenses are a percentage of gross fees and therefore proportionate to income, as a result this also cannot be a justification for opening an enquiry.

16. With regards to the third submission, Ms Hayes requests disclosure of relevant third party communications with the Inspector's office regarding her. The origin of this request is that Ms Hayes has, over the same time period, been engaged in a dispute that has led to litigation regarding online harassment that she claims she has been subject to. The date from HMRC's internal systems on which she was selected for an enquiry coincides with the period during which complaints were made about her to various bodies, including her chambers and political party.

17. Ms Hayes was concerned that she had been selected for enquiry as a result of an approach by a third party, being one of the same group of people who had been subjecting her to online harassment and making complaints against her.

18. HMRC's core submissions were:

(1) The notice of enquiry was valid; and

(2) HMRC has reasonable grounds not to close the enquiry at this time.

19. With regards to the validity of the enquiry, HMRC submit that:

(1) The time limit for filing the return remained 31 January 2021 and nothing in the email correspondence extended the statutory filing deadline;

(2) The email correspondence issued in January and February 2021 only had the effect of deferring the time at which HMRC would issue penalties for late filing;

(3) Issuing of penalties is discretionary in any event and HMRC was exercising that discretion on a blanket basis as a result of the impact of the COVID-19 pandemic;

(4) The emails refer to the fact that the payment deadline remained 31 January 2021, which supports the conclusion that filing deadlines had not been moved; and

(5) Section 118 was not engaged by the emails sent.

20. On the application of the decision in *Raftopouolou* [2018] EWCA Civ 818, HMRC submits that:

(1) There are two parts of section 118(2);

(2) With regards to the first part, it is irrelevant in the view of the Respondents that further time may have been allowed if it was appropriate to do so, as the Respondents did not, and could not, change the date of filing for self-assessment tax returns. This date is set in law, and may only be changed by further law.

(3) Equally, the deadline for submission of a tax return cannot be alrtered by this Tribunal or any Court, other than by way of a declaration that the deadline is unlawful pursuant to judicial review proceedings (which HMRC assert it is not);

(4) If Parliament had deemed it necessary to include situations that could alter a filing deadline (or indeed any mechanism for doing so), it would have done so in the legislation, or by amendment to said legislation at a time since. However, they have not done so.

(5) Section 118(2) does not give HMRC a generic power to extend time limits in any circumstances and the decision in *Raftopoulou* supports that;

(6) Although *Raftopoulou* concerned a different circumstances, being the filing of a claim, HMRC assert that the Court of Appeal's decision can and should be applied in this situation, which is analogous;

(7) The interaction of *Raftopoulou* and section 106F is moot because the time period for filing a return had not been extended by HMRC or anyone else.

21. With regards to HMRC's grounds for keeping the enquiry open, HMRC submits that:

(1) They still need to establish whether the income for the year has been accurately recorded, in particular HMRC has requested information to enable them to verify:

(a) The income received;

(b) The business expenses claimed, including wages and staff costs; and

(c) What expenses were incurred in relation to repairs and renewals in the context of self-employment as a barrister;

(2) These are legitimate enquiries and no progress has been made in resolving them because the Appellant has not complied with the requests for information;

(3) HMRC has not requested information using its formal powers under schedule 36 to Finance Act 2008, but submits that compliance with such a notice would be unlikely to have been forthcoming based on the attitude of the Appellant;

(4) Based on the principles set out in *Price v Revenue & Customs* [2011] UKFTT 624:

> "HMRC is entitled to know the full facts related to a person's tax position so that they can make an informed decision whether and what to assess. It is clearly inappropriate and a waste of everybody's time if HMRC are forced to make assessments without knowledge of the full facts."

(5) In the absence of any further information submitted by the taxpayer, HMRC is unable to determine the full facts and therefore has reasonable grounds not to issue a closure notice;

(6) HMRC has not unreasonably protracted the enquiry.

22. With regards to Ms Hayes's request for disclosure of any third-party notification to HMRC, Mr Ness submitted that:

(1) he had checked the data available to him and not seen anything to indicate that the enquiry was prompted by a third party;

(2) he did not know if this Tribunal had the power to order such disclosure; and

(3) if it does, he would request that it is refused.

DISCUSSION

Validity of enquiry notice

23. I will deal first with two submissions that were made but which I do not accept are relevant to the question of validity.

24. HMRC sought to suggest that because the emails made it clear that payment remained due by 31 January 2021, the time limit for filing returns cannot have been extended.

25. This is not correct. The deadline for making payment (in circumstances such as this one where the notice to file has been given in the normal time frame) is in section 59B(4) of TMA 1970 and is, specifically, the date of 31 January. It is not linked to the "filing date" (as defined), whether extended or not.

26. Therefore I do not take this submission into account in reaching my conclusion.

27. Ms Hayes suggested that the reasons for opening the enquiry were not valid because they related to matters that could be explained.

28. I do not accept this submission. HMRC has very wide powers to open enquiries, for any reason. If a matter can be easily explained, Ms Hayes has the opportunity to explain it by responding to HMRC with evidence to justify her position, such as business accounts and other documents that are requested by HMRC.

29. The enquiry process is one that, by its very nature, allows HMRC to ask questions and the taxpayer to explain their position. There are a great many enquiries that end with no amendments being made to a taxpayer's return. The fact that there may be good reasons for the positions being submitted in the tax return is not a reason to suggest or conclude that the opening of the enquiry itself is invalid.

30. Therefore I do not take this submission into account in reaching my conclusion on validity.

31. Turning to the main submissions on the deadline, I consider that it is helpful to set out in full the contents of the emails sent to Ms Hayes:

> "Dear customer,
>
> Earlier this week, HMRC announced that customers will not receive a late filing penalty for completing their 2019-20 tax return after 31 January, as long as they file online by 28 February.
>
> We are still encouraging customers to file by 31 January, if they can, as this will help to budget and plan for your January payment.
>
> **You'll still need to pay your Self Assessment tax bill by 31 January.**
>
> Interest will be charged from 1 February on any outstanding liabilities. If any tax remains outstanding on 3 March, you'll be charged a late payment penalty of 5% of the amount still due.
>
> If you've already sent us your return and paid, thank you. You don't need to do anything else.
>
> Still need to complete your tax return? There's plenty of online support available including the following live webinar:
>
> **How do I complete my online tax return? Self-employment**
>
> We'll cover signing in and starting your return, showing your self-employment details, submitting your return and paying anything you owe. You can ask questions throughout using the on-screen text box.
>
> Register here
>
> These short videos, available on HMRC's YouTube channel, are part of a series to help you with your tax return:
>
> - Class 2 National Insurance contributions and your Self Assessment tax return

- Viewing your Self Assessment tax return calculation
- How do I pay my Self Assessment tax bill?

If you can't pay in full

These are difficult times and we know that many of our customers are facing financial difficulties due to the coronavirus (COVID-19) pandemic.

If you can't pay in full by 31 January, you may be able to set up an affordable plan where you can pay over time in instalments. You'll still be charged interest, but if you set up the payment plan before 3 March you won't be charged a late payment penalty as long as you keep to the terms of the payment plan.

Go to GOV.UK and search 'difficulties paying HMRC'.

Follow the National Cyber Security Centre's six essential steps to keep you secure online by visiting CyberAware.gov.uk.

Yours sincerely

Alison Walsh

Head of Digital Communication Services"

32. A very similar email was then received by Ms Hayes on 23 February 2021. The text is as follows:

Dear customer,

Please remember that you still need to complete your 2019-20 tax return.

If you've already sent us your return and paid, thank you. You don't need to do anything else.

You will not receive a late filing penalty as long as you file online by 28 February.

Interest has been charged from 1 February on any outstanding liabilities. You will not be charged a 5% late payment penalty if you pay your tax or make a Time to Pay arrangement by 1 April.

Payment plans or payments in full must be in place by midnight on 1 April to avoid a late payment penalty.

If you can't pay in full

These are difficult times and we know that many of our customers are facing financial difficulties due to the coronavirus (COVID-19) pandemic.

If you can't pay in full, you may be able to set up an affordable plan where you can pay over time in instalments. You'll still be charged interest, but if you set up the payment plan by 1 April you won't be charged a late payment penalty as long as you keep to the terms of the payment plan.

Go to GOV.UK and search 'difficulties paying HMRC'.

Follow the National Cyber Security Centre's six essential steps to keep you secure online by

visiting CyberAware.gov.uk.

Yours sincerely

Alison Walsh

Head of Digital Communication Services

33. There are two parts to the question at hand:

(1) Did the content of those emails constitute an extension of time within section 118(2) of TMA 1970; and

(2) If so, what are the consequences of that extension on the enquiry window.

34. HMRC's submission was that the email correspondence did not extend the statutory deadline. HMRC has wide powers, including the discretion not to collect penalties, but the purpose of the email correspondence was not to provide an extension of time to file, only to suspend penalties for 1 month.

35. Ms Hayes on the other hand submits that the purpose of the emails was to give an extra month to file the returns and that it therefore extended time as set out in the first part of section 118(2). She argued that it was intended to help taxpayers by extending time.

36. As an initial question of fact, I considered whether there is anything in those emails that could be read as allowing extra time to file?

37. I note the following from the emails:

(1) the due date or filing date for the return is not expressly referred to as such in the email at all.

(2) There is not a statement, as there was for payment, that the due date for filing remains 31 January.

(3) There is also not a statement that the due date for filing has been extended to 28 February.

(4) The first email "encourages" filing by 31 January but this is expressed specifically as being helpful for the purposes of helping budget and planning for the payment due on 31 January.

38. I do not consider that the emails were clear and unambiguous in providing an extension or change to the filing date. The concessions made in the emails relate to penalties rather than the filing deadline itself.

39. It was not cited to me by either party at the hearing, but the decision of the Court of Appeal in *Raftopoulou* [2018] EWCA Civ 818 is relevant to the question of extension of time, and written submissions were received from both parties, summarised above.

40. The Court of Appeal (Lord Justice Richards, with whom Lady Justice Arden agreed) considered the effect of section 118(2). The following paragraphs are most relevant here:

> "67. Looking at the context of TMA 1970 as a whole further supports, in my judgment, the construction of section 118(2) for which HMRC contends. Although many of the mandatory requirements formerly contained in TMA 1970 have been re-enacted in other legislation, it still contains a number of such provisions. Section 118(2) has a clear purpose to serve in relieving taxpayers of the consequences of failing to comply with those requirements in circumstances where the conditions for the application of the deeming provisions of the sub-section apply.
>
> "68. TMA 1970 also contains a number of time limits, including those in schedule 1AB. In some cases, those time limits are coupled with provisions enabling them to be extended. The UT suggested that in such cases the general effect of section 118(2) would cede to the conditions of the particular provision in question. That is a sensible reading of such provisions

> if it is assumed that section 118(2) has the general effect of extending time. However, it fails to take account of the improbability of specific time extension powers and a general time extension provision co-existing in the same enactment when the general provision contains no clear indication that it is indeed to take effect as a time extension provision. In other words, the presence of the specific provisions tells against section 118(2) having any time extension function at all. If section 118(2) had been intended to have this effect, it is likely in my judgment that it would have been clearly stated."

41. Ms Hayes argues that the decision on section 118(2) is obiter dicta because it was not determinative of the case. However, Richards LJ expressly states, in paragraph 52 of his judgment that the issue arising under section 118(2) forms part of the ratio of their decision. He also recognised that the interpretation issue has wider ramifications beyond the scenario concerned in *Raftopoulou.* For the same reason, I do not consider that *Raftopoulou* can be distinguished purely on the grounds that it was dealing with a taxpayer claim rather than a self-assessment filing deadline.

42. Ms Hayes also argues that paragraph 68, quoted above, concerns only the second half of section 118(2). I cannot agree with that contention. Paragraph 68 is part of the wider discussion of the interpretation of section 118(2) as a whole. The part included in paragraph 68 is concerned with how extensions of time are dealt with in TMA. It is only the first half of section 118(2) that concerns extensions of time. Richards LJ notes in paragraph 65 that "if the purpose of the second part included extensions of time, it is surprising that the drafter included no similar words in that part". In my view, it is not possible to read Richards LJ's words as being in reference to the second part of section 118(2) regarding reasonable excuses only.

43. With regard to the reference in section 106F, there is, as Ms Hayes identifies, no explicit consideration of that section within the decision in *Raftopoulou.* I do not consider that HMRC's submission on this issue resolves the point, which is one of principle, rather than specific to these particular circumstances.

44. Ms Hayes is arguing that section 106F is evidence that Parliament intended section 118(2) to grant a general time extension power, on the basis that it uses the phrase "Where a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer". Further, given that *Raftopoulou* does not consider this section, she invites us to conclude that it was wrongly decided.

45. While I understand the thrust of Ms Hayes' argument, I consider that it is possible to interpret the words in section 106F in accordance with Richards LJ's approach to the first half of section 118(2). The reference to extension of time in the first half of section 118(2) is a generic phrase intended to draw attention to the reader to the possibility of an extension of time having been granted elsewhere in statute in relation to the specific time limit being contemplated. By cross-referring in section 106F to that generic phrase in section 118(2), the draftsman has, admittedly in a manner that is far from easy to interpret, given themselves a shortcut. The new part inserted into sections 106A – 106H is an adjunct to already existing obligations, most of which have their own time limits and deadlines. By referring to section 118(2), the draftsman has allowed for any possibility of an extension of those time limits to be incorporated into the new sections without having to identify them specifically and allowed for the effect of section 118(2) to be applied to those extensions.

46. I am bound to follow the conclusion set out by the Court of Appeal – that section 118(2) does not give HMRC a generic power to extend time limits in any circumstances. It is instead referring back to specific powers to extend time that are set out elsewhere in statute.

No such power to extend the filing deadline is identified in this case, therefore section 118(2) cannot be relied upon to allow extension.

47. Considering Ms Hayes' submissions regarding taxpayer safeguards, I agree that the normal 12 month enquiry window is intended to give taxpayers certainty and to protect them from enquiries being opened years later.

48. Equally, section 9A(2)(b) is a protection for HMRC – preventing late filing of returns from eroding their period for opening enquiries.

49. It may be that this consequence of failing to file by 31 January was not understood by most taxpayers. However, I do not consider that this is sufficient to tip the balance towards concluding that the email correspondence should be interpreted as allowing extra time.

50. Having made that decision, it isn't strictly necessary to consider the second point regarding the consequence of section 118(2) but given that Ms Hayes argued it, I provide a decision on it for completeness.

51. Again, this matter was considered by the Court of Appeal in *Raftopoulou:*

> "66. Second, the deeming effect of the second part is of central importance. It does not deem anything to have been done, either within a time limit or at all. It provides only that the person in question shall be deemed "not to have failed to do it". It relieves the person of the consequences of failing to do the thing, which in the context of the TMA 1970 is a financial penalty, but does not go further and provide the benefits of having in fact done the thing which the person has failed to do."

52. On this basis, even if there had been an extension of time, the effect would not have been to deem Ms Hayes to have filed her return on time for the purposes of the time limits for enquiries.

Closing enquiry

53. Having made the decision that the enquiry was validly opened, I must now consider the application to close the enquiry.

54. I agree with HMRC that they have reasonable grounds not to issue a closure notice at this time.

55. HMRC has wide powers to open enquiries and does so for a number of reasons, including risk profiling, random opening of enquiries and tip offs of non-compliance. Which one of these triggered an enquiry does not alter the outcome of a decision on closure.

56. HMRC has requested information from Ms Hayes that has not been forthcoming.

57. Ms Hayes objects to the breadth of the information, in particular that it requires her to disclose all of her personal financial affairs.

58. HMRC express that they have not issued a formal information notice under Schedule 36 to FA 2008 because they consider Ms Hayes would have been unlikely to comply with it due to her "attitude".

59. Ms Hayes vehemently refuted that suggestion.

60. I strongly criticise HMRC's inclusion of this statement in their statement of reasons. It adds nothing to their submissions on the question at hand regarding closing the enquiry at this time. Ms Hayes has responded to all correspondence issued to her by HMRC and has asked appropriate and clear questions of HMRC. Some of those questions were not answered to Ms Hayes' satisfaction and this has given rise to this application to the Tribunal. She queried the

validity of the enquiry and therefore did not respond to the information requests until that question was resolved, which has only occurred on the making of this decision.

61. The correspondence I have seen and her demeanour within the hearing did not suggest an "attitude" of refusal to comply, but rather a person wishing to exercise her statutory rights.

62. If HMRC issued a formal information notice, Ms Hayes may choose to exercise a right of appeal concerning the contents of that notice.

63. However, no such notice has been issued and there is no right of appeal to this Tribunal on an informal information request. Therefore I do not consider the scope of the information request further.

64. It was not disputed that Ms Hayes has not complied with the informal information request.

65. I therefore accept that HMRC do not have the full facts on which to make a reasonable assessment of whether the tax included on the self-assessment tax return is correct.

66. I am therefore satisfied that there are reasonable grounds for not issuing the closure notice at this time.

Application for disclosure

67. This Tribunal has wide case management powers, in particular, has powers under the Tribunal Procedure Rules (SI 2009/273), Rule 5(3)(d) to require a party to disclose information to the Tribunal or a party.

68. The extent of this power in relation to Ms Hayes request was not fully argued before me, in fact neither party referred to that power at all and neither party were certain whether the Tribunal had the power to order the disclosure requested by Ms Hayes.

69. When exercising any of its powers, the Tribunal must give effect to the overriding objective in rule 2 of the TPR, which provides that cases must be dealt with fairly and justly.

70. I note that HMRC has a general duty of confidentiality under section 18 of the Commissioners for Revenue and Customs Act 2005, but that this can be overridden by an order for disclosure.

71. In this case, I have decided not to order such disclosure for the following reasons:

(1) Knowledge of whether a third-party tip off to HMRC was the source of the enquiry does not further the hearing of this application, but relates rather to Ms Hayes' wider issues, including High Court proceedings, relating to harassment;

(2) HMRC has a legitimate public interest in defending its right to confidentiality of this nature of information because tip offs from the public can provide HMRC with information regarding a wide range of tax non-compliance, which in turn enables HMRC to meet its obligations of collecting the right amount of tax from all taxpayers. For the sake of clarity, I make this statement in connection with the wider policy, not because there is any evidence of tax non-compliance by Ms Hayes.

DISPOSITION

72. For the reasons set out above:

(1) I find the enquiry was validly opened; and

(2) I refuse the application for closure of the enquiry; and

(3) I refuse the application for specific disclosure of any information held by HMRC regarding tip offs or similar which may have triggered the enquiry.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

73. This document sets out our decision following a review that we performed under Rule 41 of the Tribunal Rules and 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.

ABIGAIL MCGREGOR
TRIBUNAL JUDGE

Release date: 27th SEPTEMBER 2024