

Closure notices (Lecture P1415 – 12.38 minutes)

This article considers various issues relating to closure notices, which can be used by HMRC to settle an enquiry into a taxpayer's tax return (whether under Self-Assessment or Corporation Tax Self-Assessment), and which can be requested from the tax tribunal by a taxpayer. The article focusses on final closure notices, with partial closure notices covered in a separate occasion.

Background

A closure notice is one of the ways that an enquiry into a taxpayer's return may be concluded. The issue of the notices is covered by the following legislation:

- Taxes Management Act 1970, s28A and s28B (closure notices for personal, trustee, non-resident CGT and partnership enquiries);
- Finance Act 1998, Sch 18, paras 32 and 33 (closure notices for corporation tax)

Final closure notice issued by HMRC

Where there has been an enquiry into a tax return (under either the ITSA or CTSA provisions), the officer may, when he has considered the information and documents provided by the taxpayer, issue a final closure notice to formally conclude the enquiry.

When a final closure notice is issued by HMRC, the notice must, in accordance with TMA 1970, s 28A, para 2, "state the officer's conclusions and

- a) state that in the officer's opinion no amendment of the return is required, or
- b) make the amendments of the return required to give effect to his conclusions".

There is a similar provision at FA 1998, Sch 18, para 34 in relation to CTSA enquiries.

The final closure notice is usually issued after the position regarding the revised profits, etc, have been agreed with the agent. The officer will also issue any assessments, or other formal notices, that are required. In such circumstances, apart from checking the documentation issued by HMRC, and advising the client accordingly, it is unlikely that any further action will need to be taken by the adviser.

Where agreement has not been reached with the agent, the officer may issue a final closure notice in the figures which the officer believes to be correct, based on his conclusions of his review. The client has the right of appeal against the final closure notice, and may seek a statutory review of the decision, or follow other formal channels (Alternative Dispute Resolution or the tribunal) for resolution of the position.

Closure notice application by client

The statutory provisions noted above permit taxpayers to apply to the tax tribunal for the issue of a closure notice (full or partial). An application can be made at any stage of an enquiry, and there isn't a limit on the number of applications that can be made.

HMRC's Enquiry Manual anticipates particular occasions when a taxpayer might seek the issue of a closure notice from the tribunal following:

- the issue of the opening letter and request for information (EM1981);
- the issue of a formal notice (see EM1982);
- contact with the taxpayer (see EM1983);
- delay by the enquiry officer (see EM1984).

There may be other instances where an adviser considers that it would be appropriate to seek a closure notice from the tribunal. Each case must be considered on its merits, and the tribunal will consider the particular facts of the case before reaching their decision.

HMRC officers are advised that, when a closure application is made, they should review the enquiry to date, and consider whether requests for information are reasonable and justified. Officers are also advised to consider whether they can close the enquiry, or whether a partial closure notice should be issued (see EM1980).

Advisers should note that making an application for a final closure notice, or indicating to the officer that one will be made, may focus the officer's attention on the case, such that he issues a closure notice, or takes other action which moves the case forward. A discussion with the enquiry officer to establish why they have not been able to close the enquiry may prove fruitful. However, that will not always be the case.

Where the application proceeds to the tribunal, the legislation provides that "The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing the partial or final closure notice within a specified period" (TMA 1970, s28A (6), with a similar provision in FA 1998, Sch 18). Thus, the onus is firmly on HMRC to convince the tribunal why the enquiry should be allowed to continue.

Outcome at the tribunal

There are various potential outcomes when a final closure notice application is made.

The tribunal may direct that a full closure notice should be issued within a specified period, and as noted above, this is the default outcome under the legislation if HMRC are not able to persuade the tribunal that the enquiry should be allowed to continue. The period granted to HMRC will vary from case to case, and the officer could be given several months to issue the closure notice. The officer must base their conclusion and figures on whatever information is held.

Advisers should note that the issue of a full closure notice does not necessarily mean that the case is settled, as the officer will issue the notice based on his conclusions, which may not be the same as those of the adviser or client. In such circumstances, the taxpayer can appeal when the final closure notice is issued, so that the substantive issues can be resolved (whether by ADR or at the tribunal).

If the tribunal allows the enquiry to continue, the taxpayer can appeal a point of law against the tribunal's decision. Similarly, HMRC can appeal against the tribunal's decision to issue a closure notice if they consider that the tribunal has made an error in law in its judgment.

Where the tribunal does not direct that a closure notice be issued, the taxpayer can make further applications for a closure notice.

Advisers should consider whether the circumstances have changed sufficiently to improve the chance of success. A succession of applications for a full closure notice in a short period of time is unlikely to be a prudent, or cost-effective, approach.

Another potential outcome is that the tribunal direct that a partial closure notice should be issued within a specified period of time, and that outcome will be considered in a separate session.

Practical considerations

There are various issues that the agent should consider when dealing with a final closure notice issued by HMRC, and these include the following:

- Check the conclusions, and any figures, contained in the final closure notice, and associated assessments or formal notices, to ensure that they agree with the outcome of negotiations with HMRC;
- Where the officer has used his own figures in the closure notice, the agent should consider the appropriate remedy (usually this will be one or more of the following - statutory review, Alternative Dispute Resolution or the tax tribunal).

Where the agent is considering whether the client should seek a direction from the tribunal for the issue of a final closure notice, the following points should be borne in mind:

- Advise the client as to the potential outcomes;
- If the tribunal direct HMRC to issue a final closure notice, that is not, necessarily, the end of the process, and it may be necessary to appeal against the notice, when issued, so that the substantive points can be heard at the tribunal;
- Timing of the application is crucial, as seeking a closure notice too early will reduce the chance of success;
- Where information has been submitted to the officer, it is prudent to allow a reasonable time for that information to be reviewed, before seeking a final closure notice direction;
- What is reasonable will vary from case to case;
- Consider seeking a final closure notice where the enquiry officer continues to ask questions beyond what is considered reasonable, and has embarked on a 'fishing expedition';
- Speak to the enquiry officer, if possible, before making an application to the tribunal, as that may help to focus his mind on the enquiry, and to move the case forward;
- There is a risk that if a final closure notice is sought prematurely, and HMRC subsequently establish a significant tax irregularity, your client may be exposed to higher penalties than would otherwise be the case.

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