

**Notices under section 9A and 19A of the Taxes Management Act 1970;
validity**

THE SPECIAL COMMISSIONERS

DR A G SIWEK Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE Respondents

Special Commissioner: J. GORDON REID Q.C., F.C.I.Arb.

Sitting in Edinburgh on 15 May 2002

The Appellant in person

Mr J Hughes HMIT for the Respondents

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DECISION

This is or at least appears to be an appeal brought under section 19A(6) of the Taxes Management Act 1970. That subsection relates, *inter alia*, to any requirement imposed by a notice under section 19A(2). Section 19A relates to the powers of the Board to call for documents within a specified time, which may not be less than thirty days, in connection with, among other matters, enquiries into a return on the basis of which a taxpayer's self assessment statement was made. In this appeal, the Appellant appeals against a Notice dated 12/10/01 issued by the Inland Revenue requiring the Appellant to produce certain documents and information relating to his 1999-2000 Tax Return.

The appeal was heard at Edinburgh on 15th May 2002. The Appellant represented himself. The Revenue were represented by Mr J Hughes, HM Inspector of Taxes. Each party produced a bundle of documents. The authenticity, and where appropriate, the transmission and receipt, of these documents were not in dispute. Neither party led oral evidence. The factual background to the appeal is as follows: -

1. In about March 2001, the Appellant submitted his Tax Return for the year ended 5/4/00. Parts were incomplete and an amended Return was submitted on or about 17/3/01.
2. In subsequent correspondence the Appellant requested repayment of what appeared to be an overpayment of tax.
3. By letter to the Appellant dated 14/6/01, the Revenue (Aberdeen Office) informed the Appellant that they intended to make *some enquiries into this return*. Having referred to and enclosed a copy of the Revenue Code of Practice 11 *Enquiries into tax returns by local Tax Offices*, the letter contained the following: - NOTICE OF ENQUIRY UNDER SECTION 9A(1)(a) TAXES MANAGEMENT ACT 1970. ... *before any repayment is processed please provide me with the following information regarding the 2000 Tax Return*. There then followed a list of matters in respect of which

- information and/or clarification or confirmation was sought no later than 10/7/01.
4. Thereafter, following further correspondence, a further letter, dated 27/6/01 [A/3] was sent by the Revenue to the Appellant. It was in similar terms to the letter dated 14/6/01. It intimated the intention to make some enquiries into the return, referred to section 9A(1)(a) and asked for the same information and/or clarification or confirmation. The letter requested that the information etc be provided no later than 31/7/01.
 5. By letter dated 29/8/01 to the Appellant, a complaints officer of the Customer Service Division of Inland Revenue Scotland informed the Appellant *inter alia* that *The notice of enquiry under section 9A(1)(a) Taxes Management Act 1970 is an informal request for information*. That letter also pointed out that the letter dated 14/6/01 was a reissue of an earlier letter dated 6/6/01 which had been returned undelivered because the Appellant was not known at the address to which it was sent; and that the date 10/7/01, was not amended to allow the Appellant 30 days to supply the information requested.
 6. The Appellant did not produce the information requested. Further correspondence ensued culminating in three letters.
 7. By letter to the Appellant dated 12/10/01, the Revenue gave him notice that he was required by law to produce the documents and provide the information listed in the letter within 30 days from the date he received the notice. The letter was headed **Notice requiring documents and other information (Section 19A Taxes Management Act 1970)**. The letter concluded by informing the appellant (i) that if he did not comply with the notice he might be liable to a penalty, and (ii) of his right to appeal against the notice.
 8. The second, dated 30/10/01 from the Appellant to the Revenue, stated that Inland Revenue Scotland appeared to be acting at variance with the 1970 Act. The letter went on to state, in effect that the 14/6/01 letter contained a requirement under section 19A to produce information within 26 days. The letter concluded by stating that the Appellant wished to appeal against the Notice dated 12/10/01, and made the point that a return which had been the subject of one notice of enquiry may not be the subject of another, referring to section 9A(3).
 9. The third letter was a reply by the Revenue dated 6/11/01. That letter informed the Appellant that the Revenue were treating his letter dated 30/10/01 as an appeal against the notice under section 19A. It further stated *inter alia* that the Revenue considered that the letter dated 14/6/01 was a valid section 9A notice.
 10. It is Revenue practice, following intimation that enquiries into a return are to be made, to make an informal request for the information sought; if the information requested is not produced they may issue a statutory notice under section 19A of the Taxes Management Act requiring production of documents. This practice is set forth on pages 3-5 of the Inland Revenue Code of Practice referred to above.

At the outset of the appeal I sought clarification of the issues in dispute. Mr Hughes stated that his understanding was that the appeal concerned the validity of the notices dated 14/6/01 and 12/10/01. The Appellant appeared to agree. I drew parties' attention to the fact that under section 19A(6) of the 1970 Act an appeal may be brought against any *requirement* imposed by a notice under subsection two. That appeared to relate to the documents specified in the notice which the taxpayer was being required to produce rather than to the validity of the notice itself. I raised the question whether I had jurisdiction to deal with the question of validity. Without reference to any other statutory provision or authority both parties submitted that I had jurisdiction and that I should deal with

the issue. I have reservations as to whether I do have jurisdiction to deal with the issue of validity. Notwithstanding these reservations, I consider that it is appropriate that I should proceed, *quantum valeat*, to determine the issue.

There was some discussion as to whether the 1970 Act fell to be read as amended by the Finance Act 2001. Both parties appeared to be of the view that it did. They also were in agreement that the amendments contained in the Finance Act 2001 did not affect the issues or arguments in this appeal. Accordingly, references to the 1970 Act in this decision are to the 1970 Act as amended, most recently by the Finance Act 2001 schedule 29, conveniently set out, as amended, in Butterworths Yellow Tax Handbook 2001-2002.

The Appellant submitted that there were three issues of fact and law in dispute. They were: -

1. *In the event of a person being called upon, within the provision of section 8 of the Taxes Management Act 1970, to give a return to the Inland Revenue, is that person entitled to assume that any procedure undertaken by the Inland Revenue, pursuant to receipt of said return is governed by the taxes acts and in particular The Taxes Management Act 1970?*

The Appellant submitted that the answer to this question was *Yes*. So did Mr Hughes.

2. *Does there exist such a thing as a informal section 9A(1) enquiry?*

The Appellant submitted that the answer to this question was *No*. So did Mr Hughes. This question was prompted by the terms of the letter dated 29/8/01 referred to above. Mr Hughes fairly conceded that the terms of the letter quoted in finding-in-fact 5 above were not correct. He stated that it would have been more accurate to state that the notice was accompanied by an informal request for information.

3. *Can a person who has been called upon to submit a return within the provision of section 8 of the Taxes Management Act 1970 and had this return subjected to a notice of enquiry, be subjected to another enquiry having not made any amendment to the return?*

The Appellant submitted that the answer to this question was *No*. Again, Mr Hughes for the Revenue agreed. This question was, it seems to me, prompted because of the letter dated 27/6/01 referred to above. The Appellant submitted that this letter was invalid because it fell foul of section 9A(3) of the 1970 Act. For present purposes, that subsection provides, in effect, that a return which has been the subject of one notice of enquiry may not be the subject of another. The Appellant, had, he argued, already been the subject of one notice of enquiry, the 14/6/01 letter, so could not be the subject of another. Mr Hughes accepted that if the 14/6/01 letter was a valid notice under section 9A then the 27/6/01 letter was invalid.

The Appellant had set out these questions in writing and submitted them in advance of the Hearing. He discussed them again in the course of his submissions.

However, the real issues were (1) whether the letter of 14/6/01 constituted a valid notice under section 9A of the 1970 Act, and (2) whether the letter dated

12/10/01 constitute a valid notice. This was Mr Hughes' submission and the Appellant appeared to agree.

In my view, the letter dated 14/6/01 does two things. In the first place, it gives the Appellant notice of the Revenue's intention to enquire into the Appellant's Tax Return for the year ended 5/4/00. It therefore complies with section 9A(1). There was no issue between the parties in relation to the timing provisions contained in section 9A(2). As at 14/6/01, the return in question had not already been the subject of another notice of enquiry. Accordingly section 9A(3) is complied with. The remaining subsections are not relevant for present purposes. The letter therefore meets the statutory requirements of section 9A.

In the second place, the letter **requests** the taxpayer to produce information. It does not **require** him to produce it. The letter is not a notice under section 19A for the very reason that it does not require the information to be produced; it merely asks that it be produced. Accordingly, the minimum period of thirty days set forth in section 19A(2) has no application to a request for information and documents following or sought along with intimation of a section 9A notice. The Appellant's argument was that the letter dated 14/6/01 was a section 9A notice and a section 19A notice; but, as the letter referred to production of information and documents within a period of less than thirty days, it was invalid. I cannot accept this argument for the reasons given; the letter does not require the production of information etc but merely requests its production. Such a request was in accordance with the practice explained in the Inland Revenue Code referred to above. The thirty day period does not apply to this letter because it does not contain a requirement to produce but merely a request.

The Appellant further submitted that the letter dated 12/10/01 was invalid but it was not entirely clear to me what was the basis of that submission. It appeared to be connected with the argument that the 14/6/01 letter was both a section 9A notice and a section 19A notice.

Mr Hughes submitted that although the 27/6/01 letter was issued in error, it would contain a valid section 9A notice if, contrary to his argument, the letter dated 14/6/01 did not contain a valid section 9A notice. I agree. The Appellant did not appear to appreciate that if his argument on the 14/6/01 letter was sound, this meant that the only valid section 9A notice would be that contained in the letter dated 27/6/01. Accordingly, even if his argument succeeded, it did not assist him because his only challenge to the 27/6/01 letter was that it was a second section 9A notice which fell foul of section 9A(3); if the 14/6/01 notice was invalid, the 27/6/01 letter was not a second notice at all; it became the first and only valid section 9A notice. Even if it were also to be construed as containing a section 19A notice it gave at least the minimum statutory period for production of the documents.

Mr Hughes also pointed out, correctly in my view, that it was not necessary for a section 9A notice and a section 19A notice to be contained in the same letter. This may be done but a section 19A notice may be issued at a later date as section 19A(2) expressly provides. That is what happened in the present case. Mr Hughes explained that the Revenue have been under pressure from accountancy bodies and others to adopt a more informal approach to their enquiries before exercising their statutory powers to require production of documents etc. If the Appellant's approach to the statutory provisions were correct this would be impossible, he submitted.

In summary therefore, I hold and determine that the letter dated 14/6/01 contains a valid notice under section 9A of the Taxes Management Act. The letter does not contain a notice under section 19A of that Act. The letter dated 12/10/01 does constitute a valid notice under section 19A of the 1970 Act.

In these circumstances, the appeal is dismissed.

J GORDON REID Q.C., F.C.I.Arb

SPECIAL COMMISSIONER

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