[2017] UKFTT 894 (TC)

TC06278

Appeal number: TC/2017/06017

INCOME TAX – Penalty for failure to file partnership return – Schedule 55 FA 2009 – whether partnership return applicable to LLP (limited liability partnership) – whether TMA 1970 part of Tax Acts – whether notice served correctly – whether reasonable excuse for failure - appeal allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR MARTIN MARGOTT as representative member of MDL PROPERTY CONSULTANTS LLP	**Appellants**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE RICHARD THOMAS

The Tribunal determined the appeal on 5 December 2017 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 4 August 2017, HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 27 September 2017 and the appellant's statement of 4 October 2017.

DECISION

1. This was an appeal by Mr Martin Margott ("the appellant") acting as the representative or nominated member of MDL Property Consultants LLP ("MDL"), a limited liability partnership.

2. The appeal is against penalties assessed under Schedule 55 Finance Act ("FA") 2009 ("Schedule 55") on both the appellant and his son, Mr Daniel Margott who was also a member of MDL in the tax year concerned.

Facts

3. My findings of fact are set out in the following paragraphs of this section of the decision. They are taken from the bundle of papers I was given and are not in dispute.

4. HMRC issued a notice under section 12AA Taxes Management Act 1970 ("TMA") requiring the appellant to file a partnership tax return for the tax year 2011-12 on 6 April 2012. The "partnership" concerned is MDL Property Consultants LLP ("MDL"), a limited liability partnership. That notice required the appellant to deliver the return by 31 October 2012 if filed in paper form or by 31 January 2013 if filed electronically ("the due date").

5. On 12 February 2013 HMRC issued two notices, one to each of the members of LLP (the appellant and Daniel Margott) informing them that a penalty of £100 had been assessed on each of them for the failure by the appellant to file the return by the due date.

6. On 14 August 2013 HMRC issued two notices, one to each of the members of LLP informing them that a penalty of £900 had been assessed on each of them for the failure by the appellant to file the return by a date three months after the due date and that a penalty of £300 had been assessed on each of them for the failure by the appellant to file the return by a date six months after the due date.

7. The return was filed in paper form on 27 June 2013.

8. On 29 August 2013 the appellant appealed to HMRC against all the penalties imposed on both members of the LLP.

9. On 12 September 2013 HMRC, in a letter headed "appeal against partnership daily penalties", informed the appellant that once the outcome of the appeal by HMRC to the Upper Tribunal in the case of *Donaldson v HMRC* was decided, they would write to give a decision on the appeal.

10. On 27 April 2017 (more than two years after the Upper Tribunal decision was released) it appears that HMRC gave their decision (it is not in the papers) because on 15 May 2017 the appellant asked for a review on Form SA 634.

11. On 19 July 2017 HMRC wrote to the appellant with the conclusion of the review. This conclusion was that the penalties were upheld

12. On 4 August 2017 the appellant notified appeals to the Tribunal.

The law

Partnership returns

13. Section 12AA TMA provides:

> "(1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating the establishment of the following amounts, namely—
>
> (a) the amount in which each partner chargeable to income tax for any year of assessment is so chargeable and the amount payable by way of income tax by each such partner, …
>
> …
>
> an officer of [HMRC[1]] may act under subsection (2) or (3) below ….
>
> ...
>
> (2) An officer of [HMRC] may by a notice given to the partners require such person as is identified in accordance with rules given with the notice …—
>
> (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
>
> (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
>
> (3) An officer of [HMRC] may by notice given to any partner require the partner …—
>
> (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
>
> (b) to deliver with the return such accounts and statements as may reasonably be so required;
>
> and a notice may be given to any one partner or separate notices may be given to each partner or to such partners as the officer thinks fit.
>
> …

[1] By virtue of s 50(1) Commissioners for Revenue and Customs Act 2004 reference to "the Board" (which was what s 12AA TMA as enacted said) are to be treated as references to the Commissioners for Her Majesty's Revenue and Customs, which I have abbreviated to HMRC in the text of s 12AA TMA.

(4) In the case of a partnership which includes one or more individuals, a notice under subsection (2) or (3) above may specify different days depending on whether a return in respect of a year of assessment (Year 1) is electronic or non-electronic.

(4A) The day specified for a non-electronic return must not be earlier than 31st October of Year 2.

(4B) The day specified for an electronic return must not be earlier than 31st January of Year 2.

…

(5D) For the purposes of this section "relevant period" means the period in respect of which the return is required.

…

(6) Every return under this section shall include--

(a) a declaration of the name, residence and tax reference of each of the persons who have been partners—

(i) for the whole of the relevant period, or

(ii) for any part of that period,

and, in the case of a person falling within sub-paragraph (ii) above, of the part concerned; and

(b) a declaration by the person making the return to the effect that it is to the best of his knowledge correct and complete.

…

(10A) In this Act a "partnership return" means a return in pursuance of a notice under subsection (2) or (3) above.

..."

14. The appellant and Daniel Margott were not carrying on a trade or business in partnership, but were members of a limited liability partnership formed and registered under the Limited Liability Partnership Act 2000 ("LLPA"). Such an LLP is a body corporate (see s 1 LLPA).

15. However, s 863 Income Tax (Trading and Other Income) Act 2005 ("ITTOIA") provides:

"(1) For income tax purposes, if a limited liability partnership carries on a trade, profession or business with a view to profit—

(a) all the activities of the limited liability partnership are treated as carried on in partnership by its members (and not by the limited liability partnership as such),

(b) anything done by, to or in relation to the limited liability partnership for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and

> (c) the property of the limited liability partnership is treated as held by the members as partnership property.
>
> References in this subsection to the activities of the limited liability partnership are to anything that it does, whether or not in the course of carrying on a trade, profession or business with a view to profit.
>
> (2) For all purposes, except as otherwise provided, in the Income Tax Acts—
>
> (a) references to a firm or partnership include a limited liability partnership in relation to which subsection (1) applies,
>
> (b) references to members or partners of a firm or partnership include members of such a limited liability partnership
>
> …"

How the modifications are to be made to s 12AA is covered in the discussion below

Penalties

16. The law imposing these penalties is in Schedule 55 Finance Act 2009. Those penalties can only be imposed if the person concerned fails to deliver a return that is listed in the Table in paragraph 1. Item 3 in that list is a return under s 12AA(2) and (3) TMA (though nothing in the statement of case tells me that). The penalties for failure to deliver that type of return by the due date are set out in paragraphs 3 to 6, and are respectively in paragraph 3 (an initial penalty of £100 imposed for the failure), in paragraph 4 (daily penalties due after 3 months of failure) and paragraphs 5 and 6 (fixed or tax geared penalties after 6 and 12 months of failure respectively). The penalties may only be cancelled, assuming they are procedurally correct, if the appellant had a reasonable excuse for the failure to file the return on the due date, or if HMRC's decision as to whether there are special circumstances was flawed.

17. There is a special rule for partnerships in paragraph 25:

> "(1) This paragraph applies where—
>
> (a) the representative partner, …
>
> …
>
> fails to make a return falling within item 3 in the Table (partnership returns).
>
> (2) A penalty in respect of the failure is payable by every relevant partner.
>
> (3) In accordance with sub-paragraph (2), any reference in this Schedule to P is to be read as including a reference to a relevant partner.
>
> (4) An appeal under paragraph 20 in connection with a penalty payable by virtue of this paragraph may be brought only by—
>
> (a) the representative partner, …
>
> …

> (5) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to treated as if it were an appeal in connection with every penalty payable in respect of that failure.
>
> (6) In this paragraph—
>
> "relevant partner" means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;
>
> "representative partner" means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return;
>
> …"

18. How (and if) section 863 is to be applied to paragraph 25 and indeed the rest of Schedule 55 by is covered in the discussion below.

The appeals

19. Despite the letters from HMRC referring only to daily penalties, the Statement of Case proceeds on the assumption that all the penalties are under appeal, and that is what the original appeal said. So either HMRC are admitting that the case had been mishandled or there is other correspondence which I have not seen. The outcome is that I deal with all the penalties.

Grounds of appeal & HMRC's response

20. The grounds of appeal are:

(1) The LLP had a dispute with its "registered" agent and accountants who refused to return any papers or forward notices. As a result they did not receive a paper tax return and were not able to register with HMRC to enable them to submit online. The registered office of the LLP was at the agent's address and they were unable to change it.

(2) Eventually they got copy invoices from customers but it took several months, and they contacted Companies House and eventually got the registered office changed, whereupon they registered with HMRC.

(3) They found that their Apple computer was not compatible with the software they had and so they got a paper return on 26 June 2013 and filed it on 27 June. That return was returned on 25 August because it had a typo.

(4) The appellant is dyslexic, and while that is not an excuse, it means he relies on professional advisers who let them down.

(5) The procedures at Companies House and HMRC made it virtually impossible to submit a return earlier than they did.

(6) The other member, Daniel Margott, was 20 years old and at college at the time. He had no voting rights or management duties and was not responsible for the preparation of the return, so his appeal should be allowed.

21. HMRC say in response that:

(1) MDL started in July 2009 and the appellant has been involved in other businesses and so is experienced in filing under self-assessment. [They do not say if any of these other businesses were conducted through an LLP or a partnership].

(2) The notice to file was issued to the address on HMRC's computer system which was the appellant's personal address. It was not returned undelivered and so was deemed to have been served under s 7 Interpretation Act 1978.

(3) The same applies to the penalty notices and to statements issued to both members.

(4) A person who makes no contact with HMRC regarding any penalty notices and statements is not acting as a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts.

(5) An agent who did not fulfil the partnership's expectations is not a reasonable excuse. [I assume this is meant to say that "Reliance on an agent …" but the first two words have been accidentally omitted.]

(6) It is the principal's responsibility to ensure the agent does what they are asked to do and they remain liable for the agent's defaults. That responsibility is set out in s 7 TMA [*sic*].

(7) The appellant should have contacted HMRC before 31 January 2013 to explain the problems with the agent. Because they did not, the appellant was not acting as a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts.

(8) There was thus no reasonable excuse for the appellant's failure to file.

Discussion

Burden of proof

22. HMRC say, rightly, that the burden of showing that the penalty is properly imposed is on them. If they succeed then the burden is on the appellant to show why the penalty should not have been imposed or is in the wrong amount. In this case the appellant asserts the former because he says he has a reasonable excuse.

Does s 12AA TMA apply to an LLP?

23. HMRC have throughout the Statement of Case referred to the relevant document as a partnership return under s 12AA TMA and have mentioned nowhere in that Statement the fact that the person concerned here is an LLP. I have referred above to s 863 ITTOIA which puts it beyond any possible doubt that for the purposes of the Tax Acts an LLP is not a partnership and those who participate in the LLP are not partners.

24. In those circumstances I would have expected HMRC to provide me with sufficient materials to show that what this LLP should have been issued with is a s 12AA TMA partnership return. But as the appellant has not sought to say that the return he was asked to complete as nominated partner was not the right return, I have not simply decided that HMRC have failed to discharge the burden on them. I have instead considered the issue without the benefit of any input from the parties.

25. Applying s 863(2)(b) ITTOIA, it seems that s 12AA TMA, when applied to an LLP is to be read with the modifications in bold I make here:

> "(1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating the establishment of the following amounts, namely—
>
> (a) the amount in which each **member** chargeable to income tax for any year of assessment is so chargeable and the amount payable by way of income tax by each such **member**, …
>
> …
>
> an officer of [HMRC] may act under subsection (2) … below ….
>
> ...
>
> (2) An officer of the Board may by a notice given to the **members** require such person as is identified in accordance with rules given with the notice …—
>
> (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
>
> (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
>
> (3) An officer of [HMRC] may by notice given to any **member** require the **member** …—
>
> (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
>
> (b) to deliver with the return such accounts and statements as may reasonably be so required;
>
> and a notice may be given to any one **member** or separate notices may be given to each **member** or to such **members** as the officer thinks fit.

26. The chapeau of s 12AA(1) is not so easy to fit into this scheme. By s 863(2)(a) the reference to "partnership" in s 12AA(1) is to be read as a reference to "limited liability partnership", so the case there would read "[w]here a trade, profession or business is carried on by two or more persons in a limited liability partnership", which makes little or no sense: unlike the position with a general partnership where the trade

is carried on jointly by the partners in partnership, where an LLP is concerned the trade is carried on by the LLP, not by the members.

27. Thus what needs to be considered in carrying out the exercise required by s 863(2) is the whole phrase “carried on by two or more persons in partnership”. This cannot be done, as I have shown, merely by a one for one substitution.

28. This particular phrase is one where I consider that there is provision otherwise so as to not require s 863(2) to apply. Section 863(1)(a) recognises that an LLP carries on the trade or business, not the members, and so treats all the activities as carried on in partnership by the LLP’s members for income tax purposes. Applying subsection (1) of s 863, s 12AA applies “where a trade, profession or business is [treated as] carried on by two or more persons in partnership”. With that change the chapeau of s 12AA(1) does work fully in the case of an LLP.

29. But it seems to me that there are also problems caused by s 863(2). Section 12AA(2) TMA as modified in §25 requires the notice to be given to the “members”. In the unmodified version it requires the notice to be given to the “partners”. HMRC clearly treat that as a requirement that the notice is given to the partnership: from the HMRC and National Archive (“TNA”) website I find that the wording on the 2011-12 partnership return and notice to file (SA800) is:

> “If this Partnership Tax Return has been issued *in the name of the partnership*, then the partner nominated by the other members of the partnership during the period covered by the tax return is required by law to complete it and send it back to us. If the partners are unable to nominate someone, they should ask us to nominate one of them.” [my emphasis]

30. I accept that they are right to do this in the case of a partnership as it is the partners jointly who are carrying on the partnership. For an LLP it does not make good sense to say that all of the members must receive the notice: far better is it that the requirement should be to give one notice to the LLP, an entity capable of receiving it in a single place. To require a notice under s 12AA(2) on all the members would be to trespass on part of the territory of s 12AA(3).

31. This then in my view is a case for a non-literal substitution, but one in accordance with the reality of the matter. And it seems to me from the bundle that HMRC agree because at least one record of computer entries strongly suggests that the s 12AA(2) notice was issued to the LLP in its own name.

32. I hold therefore that where HMRC act under s 12AA(2) they must give the notice to the LLP itself, whereupon it is for the “person […] identified in accordance with rules given with the notice” to make and deliver the return. In this case it is clear from the papers in the bundle that HMRC have acted under s 12AA(2) rather than 12AA(3), but they have not provided anything to show what the rules in the notice were for the tax year in question. The specimen tax return incorporating a notice to file which HMRC enclosed is an individual tax return under s 8(1) TMA, not a s 12AA return, so does not show what the partnership rules are.

33. But in §29 what the rules are can be seen (at least for a partnership). The person required to make and deliver the return is the person nominated for that purpose. With an LLP that should be the member nominated for the purpose.

34. HMRC say in their Statement of Case that the appellant is that nominated member (they say "partner" of course), but refer to no document as evidence of that. It is only the appeal form in the bundle that indicates that the appellant identifies himself as the nominated partner.

But is TMA part of the Income Tax Acts?

35. The previous subsection of this part of the decision shows that in this case HMRC have correctly issued the notice to the LLP and that the nominated member, the appellant, is the one who has accepted responsibility for the filing and presumably was the one who did file the return.

36. But that is only correct if the modifications made by s 863(2) ITTOIA are made "in the Income Tax Acts". It should be noted that this limitation does not appear in s 863(1) which applies "for income tax purposes".

37. The question then is whether TMA is part of the Income Tax Acts, as if it is not then there is no modification to be made in any part of it that refers to partners or partnerships, including s 12AA, except where the reference is to the activities of the LLP (where the modification is made by s 863(1)).

38. It is not entirely obvious to me that TMA is included in the term "Income Tax Acts" used in s 863(2).

39. This is because the definition of the "Taxes Acts" in s 118(1) TMA is:

> "this Act *and* … the Tax Acts". [My emphasis – "this" Act being TMA itself]

40. TMA does not itself define the Tax Acts, but Schedule 1 to the Interpretation Act 1978 ("IA78") does, and says that ""[t]he Tax Acts" means the Income Tax Acts and the Corporation Tax Acts."

41. Although TMA was enacted before IA78, because there is no date mentioned after the relevant paragraph in Schedule 1 to IA78 then paragraph 4(1)(b) of Schedule 2 to that Act has the effect that the definition of the Tax Acts in IA78 applies to TMA. ITTOIA is of course part of the Income Tax Acts, and so is Schedule 55 at least to the extent that its provisions encompass income tax matters such as Items 1 and 3 in the Table in paragraph 1.

42. But the point that causes me unease is the distinction TMA draws between itself on the one hand and the Income Tax Acts on the other, as the writ of s 863(2) ITTOIA extends only to the Income Tax Acts. Does this distinction mean that s 863(2) does not extend to TMA?

43. I do not think it does mean that. But the point is not free from authority. In *Spring Salmon and Seafood Ltd, Re Petition for Judicial Review* [2004] ScotCS 39 ("*SSS*") Lady Smith, sitting in the Outer House of the Court of Session, considered an application for judicial review of a decision by one of Her Majesty's Inspectors of Taxes to open an enquiry under paragraph 24 Schedule 18 FA 1998 into the corporation tax affairs of the petitioner.

44. The petitioner maintained that the notice of enquiry should have been addressed to it at its registered office in Edinburgh but was addressed instead to the company secretary at an address in Reading, which was its place of business. But before that point became relevant it argued that the enquiry into its return under paragraph 24 Schedule 18 FA 1998 was a nullity because it was not made in writing. In support of the proposition that it should be made in writing the petitioner, through Iain Mitchell QC, referred to s 832(1) Income and Corporation Taxes Act 1988 which said:

> "In the Tax Acts ...
>
> 'notice' means notice in writing or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act;"

The decision of Lady Smith at [18], after quoting this definition adds:

> "'Tax Acts' is defined in s.831(2) as being ICTA and all other provisions of the Income Tax Acts and Corporation Tax Acts, and 'Corporation Tax Acts' is defined in s.831(1) as being the enactments relating to the taxation of the income and chargeable gains of companies."

45. For HMRC Patrick Hodge QC (now Lord Hodge JSC) argued to the contrary:

> "[22] Further, s.832 did not, he submitted, apply to the interpretation of the provisions of TMA. s.118 of TMA provided that it and the "Tax Acts" were two separate entities. That approach is demonstrated diagrammatically in the "family tree" of tax legislation that is set out in the 43rd edition of Tolley's Yellow Tax Handbook, from which it is clear that the expression "Tax Acts" does not include TMA."

46. Lady Smith said:

> "[23] I have reached the conclusion that the respondent's submission on this matter is to be preferred. There is no apparent reason for Parliament's failure to provide that notices of enquiry should be in writing if that was what it meant which does not make it difficult to conclude that that was not what was meant. I agree that s.832(1) of ICTA does not apply so as to affect the interpretation of the provisions of TMA. *It seems clear that TMA is separate and distinct from the group of statutes referred to as "the Tax Acts" in that section.* Further, there are instances, in the tax legislation to which I was referred, of express provision for notices to be in writing being made and that makes it difficult to escape the conclusion that it was not considered necessary for notices of enquiry to be in writing. No doubt, since the Inland Revenue will not be in a position to make a requirement for

> information under paragraph 27 or an amendment to a company's self assessment under paragraph 30, if timeous notice of enquiry has not been given, it would be wise to have a written record of such notices being given lest timeous intimation be disputed. The wisdom of such an approach is not, however, to say that it is an approach which must, to comply with the legislation, be followed. I note that, in this case, the Inland Revenue did, however, give notice to the petitioners of their intention to enquire into their tax return, in writing." [my emphasis]

47. In deciding this case I am sitting in England, the LLP is registered in England and the appellant is resident in England. Am I bound by a decision of the Court of Session as I would undoubtedly be by a High Court or Court of Appeal decision in England and Wales? The question was considered by the Upper Tribunal in an English case (and so undoubtedly binding on me) *National Exhibition Centre Ltd v HMRC* [2015] UKUT 23 (TC) (Roth J and Judge Berner). In that case the Tribunal said:

> [30] … We raised with the parties at the hearing the question whether, as the Upper Tribunal sitting in England, we were bound by *SEC*, as a judgment of the Inner House of the Court of Session. Surprisingly, there was no immediate straightforward answer to that question, and we are grateful for the subsequent work by counsel which resulted in an agreed note on the position. Essentially, whilst it is the case that the English and Scottish courts (including tribunals forming part of their respective judicial systems) are not bound to follow the judicial decisions of the other, regardless of the hierarchy level of the prior decision, it has long been the position that the interpretation of tax legislation ought, so far as possible, to follow the decisions of the cross-border court. Tax law generally applies to England and Wales and Scotland alike and should therefore be applied in the same way in both jurisdictions.
>
> ...
>
> **[32]** … These observations appear to apply particularly to questions of interpretation of the statutory wording. But on the question of precedent within the judicial hierarchy, the decision of the Court of Appeal in *Abbott v Philbin (Inspector of Taxes)* [1959] 3 All ER 590 … is very pertinent. There the issue concerned the year in which an option should be regarded as giving rise to a perquisite for the purpose of assessment to income tax. Lord Evershed MR, with whose judgment Sellers and Harman LJJ agreed, said ([1959] 3 All ER 590 at 600–601 …:
>
> > 'I ask myself, therefore, having expressed such doubts as I have, with all respect to the judges in Scotland, ought this court now to answer those two questions in a precisely opposite sense? It is, of course, quite true that we in this court are not bound to follow the decisions of the Court of Session, but the Income Tax Act and the relevant Finance Acts apply indifferently both north and south of the border, and if we were to decide those questions in a sense diametrically opposite to the sense which appealed to the Scottish judges, we should lay down a Law for England in respect of this not unimportant matter which would be completely opposite to the law

> which was applied, on exactly the same statutory provisions, north of the border. I cannot think that that is right. In a case of a revenue statute of this kind it is the duty of this court, unless there are compelling reasons to the contrary, to say, expressing such doubts as we feel we ought to do, that we should follow the Scottish decision.'

> **[33]** Although the House of Lords reversed this decision on appeal and overruled the relevant Scottish decision as wrongly decided ([1961] AC 352), Viscount Simonds approved the approach taken by the Court of Appeal, stating that 'the Court of Appeal were constrained to decide this case in favour of the Crown in deference to the decision of the Court of Session': and that 'they took the proper course in following it' [1961] AC 352 at 367–368, …

> **[34]** Accordingly, we consider that, whilst not formally bound by the decision of the Inner House of the Court of Session in *SEC,* in the absence of conflicting authority we should follow it. This means that the approach to be adopted in this case to the factual analysis is that employed by the Court in *SEC*.

48. If it is the duty of the Court of Appeal to follow a decision of the Inner House of the Court of Session, then it cannot be any the less my duty to follow a decision of the Outer House of that Court. I have considered whether it could be said that the decision of Lady Smith on this point was not necessary for her decision (ie *obiter*) but I cannot say that it was. It was a major issue in the litigation.

49. Because my doubts about the correctness of the decision remain and because it is possible that I am mistaken in my view of what SSS decided, I have set out my own views on the matter in an Appendix. But because I am bound by *SSS* my decision on this point is that s 863(2) ITTOIA does not apply so as to modify TMA[2].

50. Where does that leave s 12AA given that the chapeau of subsection (1) is treated as applying to LLPs because the treating is done by s 863(1), not s 863(2)? It might be said that once one had swallowed the camel of saying that the case covered by s 12AA includes a trading LLP it is pointless straining at the gnat of s 863(2). I think however that to effectively press s 863(1) into doing what s 863(2) does in all other situations outside TMA is to go too far.

51. The consequence of my decision is that, the LLP not being a partnership and the appellant and Daniel Margott not being partners, the purported notice to file a return given to them is not a valid notice to require the nominated member of an LLP to make and deliver a return under s 12AA.

52. It cannot then be said that there is a failure to make a return under s 12AA by the due date as there was no due date. The notice was not given for the purpose set out in s 12AA(2) as that purpose could not be fulfilled by the appellant. Accordingly the penalties must be cancelled.

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[2] I have noted the slight irony here as it was the argument of the Inland Revenue in *SSS* that prevailed on this point.

53. Having reached this decision on the basis of law which was not referred to by HMRC I considered whether it would be appropriate to ask HMRC if they wished to make submissions on the issue, as I have done when considering other paper cases. But as the decision I have reached is one where I have, reluctantly, concluded that I am bound by the clear decision of a superior court on a point of constrictions of the exact term that I am considering, I have decided not to. HMRC do of course have the right to appeal, and if they do I am bound to consider[3] whether to review my decision to consider whether it is wrong in law, and for that purpose HMRC are at liberty to set out their submissions on this point of law to seek to persuade me that I was wrong.

54. I would make two further observations.

55. There is a precedent for treating an entity or collectivity that is not a partnership as if it is and that is the treatment of an EEIG, a European Economic Interest Grouping. Section 842 Income Tax Act ("ITA") 2007 sets out the rules for treating an EEIG as transparent and for any trade carried on by it to be treated as carried on in partnership by the members. But as to returns by an EEIG, s 30A TMA applies specifically to EEIGs (or Earwigs as they are colloquially known in some quarters) in a way that is closely akin to s 12AA. Neither s 842 ITA 2007 nor any other legislation in what are the Taxes Acts seeks to modify any other legislation in the way s 863 ITTOIA does. This way of approaching the problem of dealing with a non-transparent entity as if it were works and there is even a separate penalty section for failures to file on time[4].

56. I do not see this decision as opening any floodgates. It has no effect on the tax law generally as applying to LLPs. Nor does the lack of a sanction for failure to file the return of the LLP's prfits mean that HMRC might be unable to obtain the information necessary to check that the profits of the LLP are being fully taxed. They can obtain, with the sanction of penalties, returns under s 8 TMA from each member.

57. I therefore continue to look at the issues in this case, on the hypothesis that s 12AA is apt to require a return from a LLP and that the failure to provide it is penalisable under Schedule 55.

The application of Schedule 55 to LLPs

58. There is no difficulty in making the necessary modifications or treating required by s 863 ITTOIA in Schedule 55, as the relevant parts of Schedule 55, those applying where the tax concerned is income tax, are part of the Income Tax Acts.

59. Section 863(2) then applies to make modifications so that in each place in paragraph 25 Schedule 55 (see §17) where the word "partner" appears it is to be read as "member" in the case of this (and every other) LLP. In this case the representative

[3] In *Couldwell Concrete Flooring Ltd v HMRC (No 2)* [2017] UKFTT 85 (TC) I held that a party to an appeal to the this Tribunal had a free-standing right to ask for a review without needing to appeal (see [31] to [40]). I would therefore consider such a request from HMRC without an appeal.

[4] Section 98B TMA, which for some reason was not replaced by Schedule 55.

member is the appellant because it is he who has been required by a notice under s 12AA(2) to make and deliver the return.

60. But from paragraph 25(2) it can be seen that both the appellant and Daniel Margott are relevant members and so both are (separately) "P" in Schedule 55 (paragraph 25(3)). But only the appellant may appeal and the appeal which he did make is taken as an appeal by both him and Daniel Margott.

61. It follows from the fact that there are two Ps that the provisions of Schedule 55 which relate to P must be considered separately in relation to each P, except in relation to whose action or inaction causes the failure (paragraph 1(1) Schedule 55) or in relation to who may appeal (paragraph 20 Schedule 55).

62. Thus in paragraph 1 Schedule, 55 P means the appellant only, whereas in paragraphs 3 to 6 it means both of the members of the LLP.

63. Paragraph 16 (special reduction) does not refer to P, but to a penalty and so is capable of applying to both members and the circumstances that might give rise to a special reduction may be different in the two cases.

64. Paragraph 18 (assessment) applies to each separately, and here has been so applied.

65. The application of paragraph 23 (reasonable excuse) in this situation is less clear. Paragraph 23 says:

> "(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.
>
> (2) For the purposes of sub-paragraph (1)—
>
> (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
>
> (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
>
> (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased."

66. What sub-paragraph (1) seems to say in the case of an LLP (or partnership) is that either of the members (as P) may attempt to satisfy HMRC that there is a reasonable excuse for the failure which is a failure of the representative partner (at least in a s 12AA(2) case). The more interesting question arises from paragraph 23(2)(b). Can a member who is not the representative partner say that they relied on that partner and that they took reasonable care to avoid the failure, even if the representative partner cannot rely on himself and may not be able to rely on another

such as an accountant? The non-representative partner is in a difficult position being liable to a penalty for a failure which it may not have been in their power to do anything about. So it seems that the outcome need not be the same for each member.

Who was a notice to file served on and where?

67. As has been seen, s 863(2) ITTOIA requires the Income Tax Acts to be modified "except if otherwise provided" so as to require a reference to partners in a partnership to be treated as a reference to members of an LLP.

68. Section 12AA(2), when comminuted, reads:

> "An officer of HMRC may by a notice given to the partners require the nominated partner to make and deliver to the officer a return"

69. It seems agreed that this should be treated as a reference to the LLP itself. And on the balance of probabilities, based on the entry in the HMRC computer records that I was supplied with and the terms of the s 12AA notice, I find that the notice was addressed to the LLP. But *at* what address? The papers are silent, the appellant says it was not received at his home address and says that it would have been the registered office which was his accountants address.

70. Section 115(2) TMA provides:

> "Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person—
>
> > (a) at his usual or last known place of residence, or his place of business or employment, or
> >
> > (b) in the case of a company, at any other prescribed place and, in the case of a liquidator of a company, at his address for the purposes of the liquidation or any other prescribed place."

71. A notice under s 12AA(2) is a notice to be given under the Taxes Acts (as we have seen TMA is in the Taxes Acts, whether or not it is in the Tax Acts or the Income Tax Acts) so it may be served by post, rather than being hand delivered. It is to be given by HMRC to a person, so it may be served by post if it is addressed to that person at one of the places mentioned in the subsection.

72. There has been discussion in this tribunal on the question whether paragraph (a) is appropriate in the case of a company. The question whether paragraph (a) applies to a company assumes more importance when it is realised that s 115(2)(b) is something of a dead letter, as it only applies where regulations have been made under s 115 TMA prescribing a place, and none have.

73. In *Partito Media Services Ltd v HMRC* [2011] UKFTT 07542 (TC) (Presiding Member Anne Redston, as she then was) ("*Partito*") the Tribunal held at [32] to [38] that references to a place of residence and an employment were inapt for a limited company, but, in accordance with *Spring Salmon & Seafood Ltd v HMRC* [2005] STC

(SCD) 830[5], a company could have a place of business for the purposes of s 115(2)(a) TMA.

74. A very relevant consideration in *SSS* was that s 115(2)(b) referred to "any *other* place" ie other than a place given by s 115(2)(a) – see *SSS* at the paragraph after [27] and before [28].And, as Lady Smith noted in *SSS*, treating company as coming within s 115(2)(a) would mean that there was a provision for service on a Scottish partnership, a body with legal personality but not a company, which would otherwise be outside s 115(2) TMA altogether if paragraph (a) were confined as the petitioner is *SSS* argued.

75. If s 115(2)(a) applies to a company and a Scottish partnership there is no reason why it should not apply to an LLP.

76. Postal service may then be effected on an LLP by serving it addressed to the company at its place of business. Again the papers are not clear on the point, but the evidence points to the LLP's place of business (the business of consultants) being at the appellant's home address.

77. SSS shows that s 115 is permissive and not exhaustive of the possible ways by which a person may be served. The crucial thing is that service is such that the intended recipient will receive it.

78. Section 108 TMA provides an alternative method of effective service on a company. Section 108(1) says:

> "… service on a company of any document under or in pursuance of the Taxes Acts may be effected by serving it on the proper officer."

79. Does "company" in s 108 cover an LLP? In TMA "company" means, unless the context provides otherwise:

> "company" has the meaning given by section 1121(1) of CTA 2010 …"

80. That subsection of s 1121 CTA says:

> "(1) In the Corporation Tax Acts "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association."

81. This covers an LLP which is a body corporate but is not a partnership. Under s 108(3):

> "(a) the proper officer of a company which is a body corporate shall be the secretary or person acting as secretary of the company …,

[5] In fact the case cited in *Partito* was not the relevant case: the one cited was a decision of the Special Commissioners on an appeal by same company, but the question of service was another point raised in the judicial review proceedings in Court of Session.

> (b) the proper officer of a company … for which there is no proper officer within paragraph (a) above, shall be the treasurer or the person acting as treasurer, of the company."

82. Does an LLP have a secretary? The answer seems to be that it does not as such, but there is provision in LLPA for a "designated member", and the Explanatory Notes on s 8 LLPA say that this member is the one who is to carry out administrative tasks. The designated member then seems to be the person "acting as secretary" and is the "proper officer" of the LLP. Section 108 is also permissive.

83. There are also regulations which prescribe where a notice may be served on an LLP generally. They are in regulation 75 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (SI 2009/1804) which substitutes a modified version of sections 1139 and 1140 Companies Act ("CA") 2006:

> "**Service of documents on LLP**
>
> 1139.—(1) A document may be served on an LLP by leaving it at, or sending it by post to, the LLP's registered office.
>
> …
>
> **Service of documents on members and others**
>
> 1140.—(1) A document may be served on—
>
> (a) a member of an LLP, or
>
> (b) a person appointed in relation to an LLP as a judicial factor (in Scotland),
>
> by leaving it at, or sending it by post to, the member's or factor's registered address.
>
> (2) This section applies whatever the purpose of the document in question.
>
> (3) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection…."

84. I take s 1139 to apply where a notice is being served on the body corporate and s 1140 to apply where a notice is to be served on an individual member *qua* individual member, including the designated member. But I also note that like s 108 and s 115(2) these sections are permissive.

85. From this analysis of the applicable rules for service in TMA and elsewhere I conclude that notice such as is the s 12AA notice is validly served if served at the registered office of the LLP (s 1139 CA 2006), if served on the designated member (s 108 TMA) or at the place of business of the LLP (s 115(2)(a)).

86. Only s 115 TMA and s 1139 CA 2006 specify that service may be made by post. Where there is such specification, s 7 IA 78 applies as in those cases "an Act" authorises service by post of any document. Where s 7 applies then service is

presumed to have been made by the act of "properly" addressing, pre-paying and posting a letter containing the document, unless the contrary is proved[6].

87. This discussion is relevant to this case because it is the appellant's case that he, as representative partner, did not received the notice to file. He says this is because it would have been sent to the LLP's registered office which was at the address of his accountants and because of the dispute with his accountants the notice was not forwarded to him.

88. HMRC say that a notice to file for 2011-12 was issued to the address for the LLP they had on their computer which was an address in Hadley Wood in the London Borough of Barnet, which was also the private address of the two members, the appellant and Mr Daniel Margott. They add that the documents attached to the Statement of Case include a generic copy of a notice to file, a document showing the address the notice was issued to and an extract from HMRC's records for the appellant.

89. The generic copy is of no use in answering the question whether there was service simply because it is generic. In any event it is not a generic copy of a notice to file a partnership return, but a notice to file an individual return.

90. The document (a printout from HMRC's computer) showing the address does indeed show the address in Hadley Wood. But the document is headed "View Taxpayer Address History" and shows that the taxpayer concerned is "Mr M J Margott" not the LLP.

91. The third document is not as the Statement of Case states a printout of a record for the appellant but for the LLP. It shows that a notice to file was issued on 6 April 2012 and was received on 21 August 2013. It does not show an address.

92. Neither the appellant nor HMRC have produced the actual notice to file or any record of what Companies House shows for the LLP. I have looked at the publicly available information for the LLP. This shows that its registered office was changed on 18 June 2013 from Coopers House, 65a Wingletye Lane, Hornchurch, Essex to the Margotts' address in Hadley Wood. I assume that Coopers House is the address of the LLP's accountants. Companies House also shows that the accounts for the year ended 31 March 2012 were filed on 20 September 2013, that an annual return to 17 July 2012 was filed on 18 June 2013 and that notification of the termination of appointment as member was filed for Daniel Margott with effect from 6 April 2013 and for Mrs L Margott with effect from 6 April 2012.

93. The filing immediately preceding that was the filing of the 2011 accounts on 29 December 2011.

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[6] Although the reference to "the contrary" seems to apply only to the rule for the time of service, case law shows that it also applies to the presumption of service.

94. This record at Companies House for the LLP is wholly consistent with the appellant's grounds of appeal. But it does not prove that the notice to file the tax return was sent to the registered office in Essex, although it is compelling evidence to show that any notice sent by Companies House would have been sent to that address before September 2013.

95. The burden of proof on this matter is on HMRC. As they have not shown from the documents put in evidence what address the Notice to file was sent to, I find that that what they said about the place of service is based on making presumptions from the computer records. I accept the appellant's clear and convincing evidence, supported by the Companies House records, that it was issued to and served at the Essex address of his accountants, the registered office at that time of the issue.

96. That is valid service on an LLP by virtue of s 1139 CA 2006 (as modified by the 2009 Regulations) and in my view is what is required by s 12AA(2) TMA.

Does the appellant have a reasonable excuse for his failure to file the LLP's return?

97. The appellant would have been aware that in previous years HMRC issued a notice to file to the registered office of the LLP because it is clear from Companies House filing records that documents were filed in a timely manner in 2010 and 2011 when the registered office was at the Essex address.

98. He does not in fact deny that such a notice was sent to the registered office, as his dispute with HMRC was about where it was sent, not whether. What he says is that he was unable to obtain the records necessary to enable him to file the return until June 2013 because (I presume) his accountants had a lien on them.

99. HMRC protest that he should have contacted them after the receipt of penalty notices and statements of account and that his failure to do so is the mark of a person who is not acting reasonably. The implication I draw from this is that had he done so they would have agreed that he had a reasonable excuse for not filing on time. It seems unlikely that HMRC are saying that he should have contacted them only to be told that he did not have a reasonable excuse.

100. Reliance on another may be a reasonable excuse if the person took reasonable care to avoid the failure. The appellant relied on the accountants to prepare the accounts of the LLP which I assume are the only important matter to be entered on the return. There is nothing to suggest that the appellant did not try to ensure that the accountants did prepare the accounts and file the return on his behalf. His efforts failed because he was in dispute with them.

101. In my view the appellant had a reasonable excuse for the failure to file on time, and I consider that as soon as the excuse ended, when the appellant gained control of the records of the LLP and changed the registered office to his own address, he remedied the failure within a reasonable time.

Does Mr Daniel Margott have a reasonable excuse for the failure to file the LLP's return?

102. In view of what I have held about the appellant's failure, there can be no question of Daniel Margott not having a reasonable excuse for the failure. But even if I had not found that the appellant had an excuse I would have found that Daniel Margott did. He relied on his father and it was reasonable, as a sleeping partner and a student with no managerial commitment or voting rights to do so.

Special reduction

103. HMRC have addressed the question whether there were special circumstances, but have found none. I do not need to address this issue, but I am inclined to say that had I not found that there was a reasonable excuse I would have found HMRC's decision flawed on the basis that there was no reasoning given for the decision that the circumstances of the appellant's "issues" with the accountants and (they say for some strange reason) with Companies House did not amount to special circumstances.

Daily penalty

104. As to the daily penalty there is no "SA reminder" or "SA 326D" in the papers, or any partnership equivalents, so HMRC have not shown that the condition in paragraph 4(1)(c) Schedule 55 has been complied with. (See *Duncan v HMRC* [2017] UKFTT 340 (TC) (Judge Jonathan Richards)). I would therefore have cancelled them had it been relevant.

Decision

105. Under paragraph 22(1) Schedule 55 Finance Act 2009 I cancel all the penalties assessed for the tax year 2011-12.

106. 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.

RICHARD THOMAS

TRIBUNAL JUDGE
RELEASE DATE: 19 DECEMBER 2017

APPENDIX

107. If it were not for *SSS* then I would have held that notwithstanding the definition of the "Taxes Acts" in s 118(1) TMA, the Income Tax Acts include TMA. If one is examining a tax statute other than TMA that has an effect on, or is applied to, "the Income Tax Acts", to know the extent of those effects there are two possible sources, the statute itself and the Interpretation Act 1978.

108. In this appeal the statute is ITTOIA. There is no definition of the Income Tax Acts, or the Tax Acts, in ITTOIA, so recourse must be had to the Interpretation Act 1978. There in the Schedule is this definition:

> ""The Income Tax Acts" means all enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax."

109. "[R]elating to" is a term of the widest import. It is difficult to see why a distinction should be made between what might be regarded as the substantive law in eg ITTOIA and the Income Tax Act 2007 and the adjectival law in TMA, the provisions of which relate to income tax. And what is one to make of enactments such as Schedule 55 FA 2009 where there is substantive law relating to income tax, such as paragraphs 1 to 17A (so far as they apply to income tax) and adjectival law such as that in paragraphs 18 to 22 which deal with assessment and appeals, the subject matter of much of TMA.

110. But to my mind the straightforward reason why, when a provision of ITTOIA refers to the Income Tax Acts it is including TMA is that there is no need to go to TMA to find out if that Act is part of the Income tax acts as they are defined for the purposes of ITTOIA. That is because the definition in s 118(1) TMA is there for the purposes of that Act, not for the purposes of any other enactment such as s 863 ITTOIA.

111. There is some support for the view that it depends where you start, in TMA or somewhere else, in the Income Tax Act 2007, where s 959 says:

> "(1) This section deals with the application of the provisions of the Income Tax Acts about time limits for making assessments."

112. Those time limits are to be found in TMA and nowhere else. To similar effect see sections 961 and 963.

113. In Chapter 4 Part 4 FA 1994 (management: self-assessment) s 197 says:

> "(1) In the Tax Acts and the Gains Tax Acts, any reference (however expressed) to a person being assessed to tax, or being charged to tax by an assessment, shall be construed as including a reference to his being so assessed, or being so charged—
>
> (a) by a self-assessment under section 9 or 11AA of the Management Act, or

> (b) by a determination under section 28C, 28D or 28E of that Act (which, until superseded by such a self-assessment, has effect as if it were one)."

114. There is provision to the same effect in paragraph 97 Schedule 18 FA 1998 Corporation Tax self-assessment) where it refers to the Corporation Tax Acts.

115. If the view is that TMA is not part of the Income Tax Acts for all purposes, then these provisions would apply to any references to assessment outside TMA but not within it.

116. Does it make sense to exclude TMA from the ambit of s 197 FA 1994 and paragraph 97 Schedule 18 FA 1998?

117. There are references to a person being "assessed to tax" in the following provisions of TMA:

(1) Section 8A(5) where it is a modification of the person who is assessed to tax under s 29 – so this depends on s 29.

(2) Section 9(1)(b) where the amount in which a person is "assessed to income tax" must mean self-assessed, as by s 9(1)(a) a self-assessment is an assessment. The same is true of "tax to be assessed" on a person in s 9(1A) (because it says so explicitly) and "assessment" in s 9(3)(a). So s 197 FA 1994 is not actually needed here as the references are self-explanatory.

(3) Section 29 does not contain "assessed to tax", but the reference in subsection (1)(a) to "income which ought to have been assessed to income tax" as regards a person only makes sense if that includes "self-assessed", but it could also include an earlier assessment which is not a self-assessment. The same applies in s 29(1)(b), but not in the fullout or subsection (8). And "assessed" in the (2) fullout of subsection (2) must mean by an assessment which is not a self-assessment ("non-SA assessment").

(4) Section 32 where "assessed to tax" must encompass both a self-assessment and a non-SA assessment.

118. There are references to a person being "charged to tax by an assessment" in the following provisions of TMA:

(1) Section 30A uses the term explicitly in only in relation to a non-SA assessment.

(2) Section 50 uses the term (prefixed by under- or over-) explicitly only in relation to a non-SA assessment.

(3) Section 55(6)(b) can only refer to a non-SA assessment.

119. There are references to a person being "charged to tax by an assessment" in the following provisions of TMA:

(1) Section 30A uses the term explicitly in only in relation to a non-SA assessment.

(2) Section 50 uses the term (prefixed by under- or over-) explicitly only in relation to a non-SA assessment.

(3) Section 55(6)(b) can only refer to a non-SA assessment.

120. There is no obvious reason to exclude TMA from the Income Tax Acts or the Corporation Tax Acts, even though many of its provisions relating to assessment are explicitly related to either a self-assessment or a non-SA assessment. But certain references in sections 29 and 32 TMA should include both, and do not obviously do so without s 197 FA 1994 providing the necessary guidance.

121. What is more it is not necessary to go outside the four corners of TMA to see that references in it to the Income Tax Acts must include itself. For example, section 59A(7) (payment on account) says:

> "(7) The provisions of the Income Tax Acts as to the recovery of income tax shall apply to an amount falling to be paid on account of tax in the same manner as they apply to an amount of tax."

122. Part 6 of TMA is headed "Collection and recovery".

123. Another example is paragraph 1(6) Schedule 1AB TMA:

> "(6) The Commissioners are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—
>
> (a) by this Schedule and Schedule 1A (following a claim under this paragraph), or
>
> (b) by or under another provision of the Income Tax Acts or an enactment relating to the taxation of capital gains.

124. In this sub-paragraph the contrast is between a provision of TMA (Schedules 1AB and 1A) and "another provision" of the Income Tax Acts. If TMA were not included in the Income Tax Acts, paragraph (b) would have said "any" instead of "another".

125. It is possible the drafter intended to say simply "by or under another provision", which would not have carried any implication that TMA was part of the Income Tax Acts, but then thought that that was too wide and needed to be more clearly defined. But if TMA is not part of the Income Tax Acts the drafter should (and would) have said "the Taxes Acts" not "the Income Tax Acts".

126. On the other hand s 109A TMA says:

> "Chapter 3 of Part 2 of CTA 2009 (rules for determining residence of companies) applies for the purposes of this Act as it applies for the purposes of the Corporation Tax Acts."

127. This makes it clear that TMA is not part of the Corporation Tax Acts and is fully consistent with the definition of the Taxes Acts in s 118(1).

128. Finally it should be noted that by s 117(2) FA 1998, Schedule 18 to that Act is treated as if it was contained in TMA. Therefore it can be argued that the s 118(1) definition of the "Taxes Acts" applies, so that if TMA is not part of the Tax Acts, neither is Schedule 18.