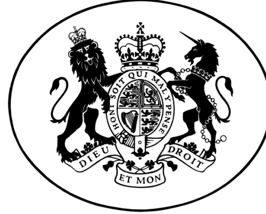
[2014] UKFTT 826 (TC)



TC03944

Appeal numbers: TC/2013/05418 & TC/2013/05420

PROCEDURE – application by HMRC to strike out the proceedings – whether agreement under s 54 TMA 1970 to settle the appeals – examination of evidence – whether evidence sufficient to establish agreement – held, yes – application granted

FIRST-TIER TRIBUNAL
TAX CHAMBER

COLIN THOMPSON
DAVID SKINNER **Appellants**

- and -

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

TRIBUNAL: JUDGE JOHN CLARK
MR TYM MARSH

Sitting in public at 45 Bedford Square London WC1B 3DN on 7 July 2014

The Appellants in person

Jake Hillier, Local Compliance, Appeals and Reviews, HM Revenue and Customs, for the Respondents

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DECISION

1. By their application made on 16 December 2013, the Respondents ("HMRC") requested that the appeals made by Mr Thompson and Mr Skinner should be struck out on the grounds that those appeals had been settled by agreement under s 54 of the Taxes Management Act 1970 ("TMA 1970").

The factual background

2. The evidence provided for the purposes of the application hearing consisted of two bundles of documents prepared by HMRC for the respective appeals. At the hearing, Mr Thompson and Mr Skinner expressed the view that such evidence did not provide a complete picture or record of the extent of the discussions between them and HMRC concerning the appeals. In addition, HMRC brought to the hearing Mr Mick Boyle of HMRC, who at the relevant time had been an officer in HMRC's Local Compliance office in Bootle, so that he would be available for questioning. From the evidence we find the following background facts. (We examine disputed matters later in this decision.)

3. The positions of Mr Thompson and Mr Skinner were in many respects similar or identical, so where this was the case, we refer to them together as "the Appellants".

4. The Appellants were at relevant times employed by a company named Bridgewell. They were members of that company's share scheme.

5. During the tax year 2006-07, certain transactions occurred in relation to Bridgewell scheme shares. For the purposes of this application, we do not need to set out precise details as to the nature of those transactions.

6. The Appellants submitted tax returns to HMRC in respect of the year 2006-07; these were acknowledged by Ms Ann Jackson of HMRC's Complex Personal Tax Team in January 2009. We infer that the Appellants were requested to submit those returns, as there was no suggestion that they had been filed late, whereas the normal latest filing date for 2006-07 returns would have been the end of the previous January.

7. On 15 January 2009 Ms Jackson wrote to Mr Thompson's agents Baverstocks with a copy of a notice to him of an enquiry under s 9A TMA 1970. An internal HMRC note from James Babbage to Ms Jackson refers to a telephone conversation on 6 February 2009, in which Mr Thompson expressed concern that he had not received the letter giving notice of the enquiry.

8. Mr Thompson subsequently provided detailed documentation to Ms Jackson.

9. On 20 January 2009, Ms Jackson wrote to Mr Skinner indicating that she intended to inquire into his 2006-07 return. She requested documents and other information. In a telephone conversation on 29 January 2009 and a subsequent letter dated 1 February 2009, he provided the limited information available to him.

10. In letters to Mr Thompson and Mr Skinner dated respectively 4 and 5 March 2009, Ms Jackson referred to the possibility that the capital gains which they had declared in their 2006-07 returns might possibly be properly assessable to income tax; she was seeking further advice on this.

5 11. On 14 May 2009 Mr Boyle of HMRC wrote to Mr Thompson to notify him that he had assumed responsibility for the enquiry. On 1 April 2009, Mr Boyle wrote to Mr Skinner informing him to similar effect, and referring to other matters.

12. Mr Boyle wrote again on 24 May 2010 to each of the Appellants to tell them that he had written that day to Ernst & Young, the advisers on the share disposals, for
10 further information. He indicated that the circumstances of this enquiry were complex, and he would contact each of them again as soon as he had some relevant information to report.

13. On 19 and 20 October 2011 Mr Boyle wrote respectively in the same terms to Mr Skinner and Mr Thompson. Despite prolonged negotiations, HMRC had not been
15 able to reach agreement with Ernst & Young on the correct tax treatment of their share disposals. He had received approval from a senior HMRC officer to raise an assessment under s 439(3)(b) of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003"). He was awaiting relevant information from HMRC's Shares and Assets Valuation office and would write further when a reply had been received from
20 them.

14. Further letters from Mr Boyle indicated that prolonged technical correspondence was continuing between HMRC's Technical Team and Ernst & Young. On 23 July 2012, Mr Boyle wrote to each of the Appellants to tell them that such correspondence had failed to result in agreement over the conversion of the
25 shares. He had therefore been advised to raise assessments under s 439(3)(b) ITEPA 2003. He indicated that he intended to raise the assessments and close the respective enquiries within the next few days.

15. On 7 August 2012, Mr Boyle wrote respectively to Mr Thompson and Mr Skinner; these letters were closure notices under s 28A(1) and (2) TMA 1970. Details
30 of the additional tax payable were set out in the letters; for the purposes of the application, there is no need to refer to the amounts.

16. Mr Thompson's new agents Baverstocks wrote to HMRC on 17 August 2012 to appeal against the conclusion in the closure notice. They stated:

> "Ernst and Young have advised all 176 people in this scheme and they
> 35 are representing the lead case which we wish to stand behind."

17. On 20 August 2012, Mr Skinner wrote to Mr Boyle, referring to the letter of 7 August and their subsequent telephone conversation. Mr Skinner confirmed that he disagreed with the decision and wished to appeal against it.

18. On 24 August 2012, Mr Boyle wrote to Baverstocks. He enclosed correspondence between HMRC and Ernst & Young explaining HMRC's reasoning. He continued:

> "I note your comments regarding a lead case, however, I have received no confirmation of this. To enable me to agree to allow your appeal to await the outcome of any test case, I need the name of the case."

19. On the same date, Mr Boyle wrote a similar letter to Mr Skinner, referring to his letter dated 20 August 2012. (We refer to this below.)

20. In response to a further letter from Mr Boyle dated 18 September 2012, Mr Skinner wrote to Mr Boyle on 30 September 2012 to confirm that he was content to await the outcome of the test case and probable Tribunal hearing.

21. The subsequent correspondence indicates that Ernst & Young requested an independent review of the decision in the "test case".

22. On 18 January 2013, Mr Boyle wrote letters in similar terms to Mr Thompson and Mr Skinner. These letters set out the relevant parts of the review officer's decision relating to the other taxpayer (ie the test case), with various modifications for data security reasons. In each case, the figures were amended to refer, respectively, to Mr Thompson and Mr Skinner. Revised tax computations were attached, in each case showing figures which were less than those appearing in the closure notices. The letters continued:

> "If you do not agree with my conclusion, you can ask an independent tribunal to decide the matter. If you wish to notify your appeal to the tribunal, you must write to HM Courts & Tribunals Service within 30 days of the date of this letter. [*Contact details omitted.*]
>
> If you notify the tribunal, any postponement of tax will continue until the tribunal has decided the matter.
>
> If I do not hear from you and you do not notify your appeal to the tribunal within 30 days of the date of this letter, I shall assume that you agree with my conclusion and the matter will then be treated as settled by agreement under s.54(1) Taxes Management Act 1970. I shall then make arrangements to give effect to my decision.
>
> You are reminded that interest, calculated on a daily basis, is charged on the tax. To keep interest to a minimum, you may want to pay the tax now even if you are proceeding with your appeal. If you pay it and your appeal succeeds, the tax will be repaid to you with interest."

23. As the facts relating to Mr Thompson and Mr Skinner differed after this point, we set these out separately in the following paragraphs.

(a) Mr Thompson

24. On 29 February 2013, Mr Boyle telephoned Mr Thompson in response to a message left the previous day. Mr Thompson explained that he would be contacting

Ernst & Young to find out whether their client's case would be going to the Tribunal; he would then either appeal and wait for the decision in that case, or take the matter to the Tribunal himself if Ernst & Young did not.

25. On 11 February 2013, Mr Boyle wrote to Mr Thompson, referring to the 18 January letter and subsequent telephone conversations. He enclosed three tax calculations, ie as the original return, as shown by the closure notice, and as resulting from the review officer's decision in the "test case", but as applying to Mr Thompson. In referring to the latter, Mr Boyle used the words:

> "c) As per the review officer's decision, should you accept this. [*He set out relevant figures.*]
>
> Should you chose [*sic*] not to accept the review officer's decision and wish to proceed to Tribunal, please refer to page 4 of my letter dated 18 January 2013 which explains the procedures you should follow in contacting the tribunal.
>
> As requested, I agree to an extension to 11 March 2013 for you to fully explore your options and look forward to receiving your decision by that date."

26. Mr Thompson wrote to Mr Boyle on 28 February 2013. He expressed various concerns. He referred to the time and cost involved in taking the matter to a Tribunal; with this in mind, he put to Mr Boyle an offer to settle the matter for a specified amount in full and final settlement for 2006-07, to include all potential interest and penalties etc.

27. Further emails and telephone calls followed; records of those calls were not included in the evidence. On 11 March 2013, Mr Thompson emailed Mr Boyle to express in strong terms his views on the liability to interest in respect of the tax. In relation to the tax liability, he stated:

> "You know I have no option but **to agree** to amended tax return."

28. On 15 March 2013, Mr Boyle wrote to Mr Thompson:

> "Further to our recent telephone conversations.
>
> As agreed, I have now amended your 2007 tax return and enclose a revised statement of account to show the impact of this."

He referred to the amounts of tax and interest, and said that the additional tax should be paid within 30 days to avoid any late payment surcharges. He also referred to the discussion of Mr Thompson's disagreement with the charge to interest, and asked Mr Thompson to write to him with the full reasons for objecting to the interest.

29. On 21 March 2013, Mr Thompson wrote to Mr Boyle:

> "I have just received my amended tax return for 2007.
>
> I wish to appeal against the interest of [*amount*] for the following reasons:"

He then set out his reasons. In the course of stating these, he commented on the way in which he had been treated, and said:

> "As you know, I still disagree with my tax bill. You cannot have all parties insisting "they are right". I am certainly the victim in this case. As you know, I have no other option but to agree to paying this tax bill because of the financial implications involved. (Penalty costs, penalty interest charges, tribunals etc)."

He enclosed a cheque for the amount of tax referred to in Mr Boyle's letter dated 18 January 2013 and at "c)" of Mr Boyle's letter of 11 February 2013.

30. Mr Boyle replied on 4 April 2013. His conclusion was that the interest had to remain; he set out his reasons.

31. On 8 April 2013 Mr Thompson sent Mr Boyle an email, stating that he wished to appeal against Mr Boyle's decision relating to interest. He also said:

> "I will also discuss with Mr Skinner whether to go for a full tribunal regarding all payments."

32. Further correspondence continued relating to the interest and other matters; we do not find it necessary to set this out in the context of the present application.

(b) Mr Skinner

33. Following Mr Boyle's letter of 18 January 2013, telephone conversations took place between Mr Skinner and Mr Boyle. No record of these was contained in the evidence, other than a reference to them in Mr Boyle's letter to Mr Skinner dated 11 February 2013, which was in very similar terms to the letter to Mr Thompson of the same date referred to above, and enclosed three different calculations for 2006-07, including one based on the review officer's decision in the "test case", but as applying to Mr Skinner.

34. On 12 February 2013 Mr Skinner telephoned Mr Boyle to inform him that he had spoken to Ernst & Young, who had initially been reluctant to discuss the matter with him, but had agreed to do so when he had told them that he had paid a sum of money to join the scheme. Ernst & Young had told him that they had been able to claim some capital gains tax relief for their client, and that he should be able to do the same. Mr Boyle said that he was unsure what capital gains tax relief he could claim, so recommended that he asked Ernst & Young to email a brief summary of what relief they felt he should claim. Mr Skinner should forward that on to Mr Boyle, who would be more than happy to review it.

35. No evidence of intervening telephone conversations was included in the evidence. On 11 March 2013, Mr Skinner sent an email to Mr Boyle:

> "To confirm our telephone conversation of today I agree to pay [*the amount of tax referred to in Mr Boyle's letter dated 18 January 2013*

> *and at "c)" of Mr Boyle's letter of 11 February 2013*] (although as you know I disagree with the ruling) to settle this tax issue.
>
> I'll await to hear from your accounts department to arrange the payment."

5 36. On 15 March 2013, Mr Boyle wrote to Mr Skinner in largely similar terms to those in his letter to Mr Thompson referred to above. Again, Mr Boyle asked for full written reasons for Mr Skinner's objection to the interest.

37. On 21 March 2013, Mr Skinner sent an email to Mr Boyle, explaining that he had just spoken to Mr Thompson, and like him, would send Mr Boyle a letter with the 10 cheque enclosed. This amended what Mr Skinner had said in a previous email and letter that day, in which he had also confirmed his wish to appeal against the interest charge.

38. Further exchanges of correspondence continued between Mr Skinner and HMRC, mainly relating to the interest charge.

15 *Arguments for the parties*

39. For HMRC, Mr Hillier referred to s 54 TMA 1970, and to *Schuldenfrei v Hilton* [1999] STC 821 (CA). The latter case established the following principles. First, the question whether an agreement under s 54 TMA 1970 had been concluded had to be considered in a statutory context, not a common law one. Secondly, common law 20 principles of offer and acceptance were of assistance in considering the question whether the taxpayer and HMRC had made an agreement under s 54. Thirdly, there needed to be a meeting of minds in a process in which both parties had participated.

40. Mr Hillier made submissions on the facts, which we consider below, together with those made by Mr Thompson and Mr Skinner.

25 41. Mr Hillier referred to various issues raised by the Appellants; the vast majority of these needed to be dealt with via HMRC's complaints procedure, and the Tribunal was not the appropriate forum to deal with these.

42. The Appellants argued that the Tribunal did have jurisdiction to consider their appeals, because those appeals had not been settled by agreement. The Appellants 30 made submissions on the facts in support of their contention; we review these below.

Discussion and conclusions

43. An initial procedural point is that that the Appellants' Notice of Appeal were received by HM Courts & Tribunals Service ("HMC&TS") on 13 August 2013. The decisions taken by HMRC were contained in Mr Boyle's two letters dated 18 January 35 2013, but in his letters dated 11 February 2013 he extended the time for notification of the Appellants' intentions to 11 March 2013. In agreeing to that extension, he did not make clear from what date the 30 day period for notifying the appeals to HMC&TS would run; however, the period from 11 March 2013 to August 2013 was substantially longer than 30 days.

44. In their Notices of Appeal, the Appellants each stated:

> "The appeal is being notified late because we were advised by HMRC that going to tribunal could result in further costs which unfortunately I was not in a position to afford. It was not until my we [*sic*] spoke to HM Courts and Tribunals earlier this year that we realised that this was not the case. Set out below is a summary of events that lead us to seek this tribunal."

45. HMC&TS notified each of the Appellants on 16 October 2013 that HMRC might object to their application for permission to appeal out of time. No such objection was received from HMRC, but it seems that the reason for this was that instead HMRC made their applications dated 16 December 2013 for the appeals to be struck out.

46. If we were to refuse HMRC's applications to strike out the appeals, the question of the late appeals would have to be addressed. We therefore need to consider first those applications made by HMRC.

47. We accept Mr Hillier's summary of the principles to be applied in considering whether there is an agreement under s 54 TMA 1970. We also accept the point made as part of HMRC's grounds for making the application that, if an appeal has been settled by agreement in accordance with s 54(1) TMA 1970, all consequences ensue as if the tribunal had determined the appeal in the manner so agreed. In such circumstances it would follow that the matter had been determined and therefore the proceedings would be *res judicata*; put simply, it would be as if the matter had already been decided by the Tribunal, so that the Tribunal would have no jurisdiction to look at it again.

48. The distinction between the Appellants' cases and those of *Schuldenfrei* and the recent case of *Roderick Thomas and Stuart Thomas v Revenue and Customs Commissioners* [2014] UKFTT 640 (TC), TC 03764 (Judge Berner) is that in those cases the taxpayer was arguing that HMRC was bound by an agreement under s 54 TMA 1970, whereas HMRC argued that they were not so bound. In *Thomas*, there was a s 54 agreement, but the dispute was whether it extended to the matters which the appellants contended were settled by the agreement. The Tribunal decided that it did not.

49. Here, the Appellants argue that they are not bound by agreements under s 54 TMA 1970. As part of their grounds for that argument, they refer to matters of which they say they were unaware at the relevant time.

50. We therefore examine the parties' contentions on the facts. To allow for possible differences between the positions of Mr Thompson and Mr Skinner, we consider separately their respective circumstances.

(a) Mr Thompson

51. HMRC submitted that there was an offer and acceptance in Mr Thompson's case. Mr Boyle made an offer in line with the review officer's conclusions on the "lead case", which Mr Thompson agreed to and accepted. There were numerous reference to "agreement" in the correspondence. In HMRC's view it was clear that in relation to the decision under the appeal, the parties were of the same mind. Both Mr Boyle and Mr Thompson were aware that in relation to the closure notice which charged additional tax, this would be settled by way of agreement at a specified figure above that shown in Mr Thompson's tax return as submitted. Both parties had participated in the process.

52. HMRC further submitted that Mr Thompson did not give notice in writing to Mr Boyle or another proper officer of the Crown within 30 days of his desire to resile from the agreement. As such, it was not open to Mr Thompson to reopen proceedings before the Tribunal, the matter having been concluded.

53. Mr Thompson's arguments, which were the same as those put by Mr Skinner, were as follows. The tribunal did have jurisdiction to consider the appeal, because the appeal had *not* been settled by agreement. No valid agreement had been reached between him and HMRC in March 2013 or at any other time, for the following reasons:

(1) He had not been aware that there was an offer capable of being accepted or declined;

(2) The terms of the so-called offer were not clear, including the amount payable;

(3) There had been considerable duress to make the payment.

54. His reluctant payment of the tax charge was not agreement to it. The payment had been made out of fear of the penalties of not paying. The word "agree" was in bold in the email dated 11 March 2013 because Mr Boyle had insisted that Mr Thompson had to "agree" to avoid further liability. The letter from HMRC to him stated that in order to dispute the interest, the tax bill had to be paid first. He simply did not have the financial means to suffer this.

55. He would not have paid the tax if he had understood that by doing so he would be taken to have agreed to the amount; he had paid because he had understood that there was no choice. He would certainly not have made this payment if he had known that by doing so, an appeal process that was otherwise available would be closed to him.

56. To the extent that the Tribunal considered that he did agree to the payment of tax on 11 March 2013 (which he categorically denied), it was clear from his letter dated 21 March 2013 (see above) and from his email dated 8 April 2013 that there was no agreement to the tax charge. Thus, even if an agreement had been reached on 11 March, which he did not accept to be the case, there was a clear desire to resile from that "agreement" ten days later.

57. The parties had not come to a meeting of minds so as to form a mutual consensus; rather, there was correspondence evidencing the continuing confusion and disagreement. The offer to him by HMRC had been said to be in line with the lead case; he was unaware of the facts, processes or conclusions of this case, and so there was difficulty in seeing how he could reach an agreement in line with it.

58. He had been given conflicting information about the possibility of appealing the income tax charge.

59. As there had been no agreement to the amount of the tax payable, he asked that the application to strike out the appeal should be rejected.

60. We have considered the correspondence. Mr Thompson, through his advisers Baverstocks (who had not been his advisers at the time when he entered into the share scheme), had accepted that the outcome of his appeal should await the result of the "test case". Once the extended period of discussions and correspondence between Ernst & Young and HMRC ended with a result which was not acceptable to the relevant taxpayer, Ernst & Young requested a review. The result of the review was that income tax was considered to be payable, but the amount of tax was substantially less than that shown in the closure notice. The details relating to that taxpayer were confidential, so in order to provide Mr Thompson with the specific information relating to his own tax affairs, Mr Boyle wrote a letter to him which was a modified version of the review officer's conclusion in the "test case".

61. Mr Boyle followed this letter up with his letter dated 11 February 2013. This used the words: "As per the review officer's decision, should you accept this." Mr Boyle also referred to the alternative option available to Mr Thompson, namely to decide not to accept the review officer's conclusion and proceed to Tribunal. Mr Thompson, who by that stage was no longer taking independent professional advice, put an offer to HMRC. We agree with Mr Hillier's submission that this suggested a clear understanding on Mr Thompson's part that there was an offer by HMRC with an option to take the matter to Tribunal if desired; instead, Mr Thompson chose to put an alternative offer to HMRC. This was not accepted.

62. In his email dated 11 March 2013, which was the final date of the extended period given by Mr Boyle for Mr Thompson to "fully explore his options", Mr Thompson indicated that he had no option but to agree to the amended tax return. Mr Boyle's letter dated 15 March 2013 confirmed the liability.

63. We find that the correspondence did result in an agreement between Mr Thompson and HMRC that his tax liability for 2006-07 was to be settled in accordance with the conclusions arrived at by the review officer in the "test case", but adjusted to take account of Mr Thompson's own circumstances. That does not necessarily decide the matter, as Mr Thompson has raised two further issues. The first is whether pressure or duress can be shown to affect his state of mind, so as to call into question whether there was a "meeting of minds". The second is whether Mr Thompson's statements in his letter to Mr Boyle dated 21 March 2013 and his email to Mr Boyle dated 8 April 2013 showed a clear desire to resile from the agreement.

64. The question of duress is an important matter. The reason for the existence of the agreement procedure under s 54 TMA 1970 is the need for certainty as between taxpayers and HMRC. Entering into such an agreement provides finality for both sides. It would therefore be undesirable for either party to be able to re-open a matter which had been thought to be settled under s 54. If a party wishes to challenge what appears to be a s 54 agreement on grounds of duress, pressure or having been misled into making the agreement as a result of misunderstanding or some misrepresentation, that party must discharge a heavy burden in seeking to demonstrate that the agreement was not properly entered into. In making these comments, we are also conscious of the comments of the Court of Appeal in *Schuldenfrei* that the question whether a s 54 agreement has been concluded has to be considered in a statutory, not a common law, context, although common law concepts may be of assistance. This leaves open the extent to which matters such as duress and misrepresentation are to be considered by tribunals in considering s 54 agreements. Without deciding this, we consider what evidence there is to call into question whether Mr Thompson's apparent agreement under s 54 TMA 1970 should for some reason be disregarded.

65. Mr Hillier submitted that it was not uncommon for people to agree to settle disputes even though they disagreed with the outcome; Mr Thompson had indicated that he still thought that he was right, but had agreed to settle.

66. We agree with Mr Hillier that it is a common experience for litigants in all types of dispute to feel disgruntled with the outcome where the advice is to settle rather than to continue with the inevitable uncertainties inherent in litigation. No information was made available by Ernst & Young to explain why, following the review officer's letter, their client decided not to continue with the process of pursuing his dispute as far as a Tribunal hearing. Mr Thompson's understanding was that Ernst & Young continued to disagree with the HMRC view, and that other advisers involved with the share scheme also disagreed with that view. The agreement reached between the "test case" taxpayer and HMRC meant that anyone who had been awaiting the result of that case, such as Mr Thompson and Mr Skinner, had to decide what to do. The choice was either to reach an agreement with HMRC under s 54 TMA 1970 or to pursue an appeal before the Tribunal.

67. We have reviewed all the correspondence, and do not consider that it contains anything to suggest that Mr Thompson was put under undue pressure to enter into a s 54 agreement. In the correspondence, Mr Thompson made it very clear that he was unhappy with the outcome, and made a number of critical comments on the way in which he had been treated by HMRC. We view the result of the process as being that he agreed to pay the tax under protest, taking into account the burden which would have fallen on him if the appeal were to be taken to the Tribunal. Without cogent evidence as to undue pressure, it is not appropriate for us to explore the precise extent to which contractual disputes about s 54 agreements fall within the jurisdiction of the Tribunal. We do not accept that there was duress in Mr Thompson's case, merely pressure of a combination of circumstances leading him to the view that there was no option but to accept the tax liability resulting from the review officer's decision.

68. On Mr Thompson's argument that there was a clear desire to resile from the agreement ten days after 11 March 2013, we have examined in detail his letter to Mr Boyle dated 21 March 2013 and his email to Mr Boyle dated 8 April 2013. The letter was sent to Mr Boyle to explain Mr Thompson's reasons for wishing to appeal against the interest charge. It also set out various comments on the way in which HMRC had handled the case. However, although Mr Thompson made clear that he disagreed with the tax bill, there is nothing in his letter to suggest that he was seeking to withdraw from the agreement. On the contrary, he said that he had no other option but to agree to pay this tax bill.

69. We have already set out the relevant sentence in the email to Mr Boyle. Does this amount to notice to resile from the agreement? Section 54(2) TMA 1970 states:

> "(2) Sub—section (1) of this section shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the inspector or other proper officer of the Crown that he desires to repudiate or resile from the agreement."

We have already referred to the need for certainty in relation to agreements under s 54 TMA 1970. For the same reason it is necessary, in a case where an appellant wishes to repudiate or resile from such an agreement, that the way in which the appellant expresses such a wish should be clear and unequivocal. Mr Thompson did not state that he wished to withdraw from the agreement with HMRC; he merely said that he would "discuss with Mr Skinner whether to go for a full tribunal regarding all payments". In making this statement, he was referring both to the dispute relating to interest, and to the tax liability. He was considering whether to seek a tribunal hearing, but was not stating a definite intention to proceed with one. There is a difference between informing HMRC that he and Mr Skinner were discussing a course of action and giving notice to HMRC that they were definitely going to take that course of action. We find that the email did not amount to a notice under s 54(2) TMA 1970.

70. We find that Mr Thompson entered into a s 54 agreement, that he did not withdraw from that agreement, and that there is no basis on which that agreement can be overturned.

(b) Mr Skinner

71. In his letter dated 20 August 2012 to Mr Boyle, Mr Skinner indicated that he wished to await the outcome of the matter being dealt with by Ernst & Young (ie what was subsequently referred to as the "test case"). He asked HMRC to postpone their demand until there was an outcome either through agreement with HMRC or through the courts. Mr Boyle's reply dated 24 August 2012 was, as he explained in his letter dated 18 September 2012, a generic letter which he had failed to personalise for Mr Skinner's particular circumstances; he apologised to Mr Skinner for his oversight. Mr Boyle provided copies of the HMRC correspondence with Ernst & Young. In his reply dated 30 September 2012, Mr Skinner indicated that he was content to await the outcome of the test case. This appears to us to be a confirmation of what he had said in his 20 August letter.

72. Mr Boyle's letter to Mr Skinner dated 18 January 2013, informing him of the outcome of the review officer's decision relating to the test case, was identical to that sent to Mr Thompson, except that the figures were adjusted to take account of Mr Skinner's circumstances. The terms of Mr Boyle's letter dated 11 February 2013 were also identical, other than the figures.

73. At the hearing, Mr Skinner disputed the account of the telephone call stated by Mr Boyle to have been made on 12 February 2013. We do not consider it necessary to make any findings concerning this note, as it does not affect the question whether there was or was not an agreement under s 54 TMA 1970.

74. Mr Skinner's email to Mr Boyle dated 11 March 2013 confirmed that he agreed to pay the tax to settle the tax issue, although he repeated to Mr Boyle that he disagreed with "the ruling".

75. In his letter to Mr Skinner dated 15 March 2013, Mr Boyle referred to their recent telephone conversations and stated that as agreed he had amended Mr Skinner's tax return.

76. Mr Skinner indicated in his email to Mr Boyle dated 21 March 2013 that he wished to appeal against the interest charge. However, he did not make any statement to suggest that he questioned the tax charge. In the same way as for Mr Thompson, we find that Mr Skinner and HMRC came to an agreement under s 54 TMA 1970. This agreement was "As per the review officer's decision" in the test case, with the tax amounts calculated by reference to Mr Skinner's circumstances.

77. For the reasons already set out above, we do not consider that there is any evidence to indicate undue pressure or duress. Mr Skinner came to an agreement with HMRC, despite his dissatisfaction with the outcome of the process. Like Mr Thompson, he paid the tax under protest. We view this as a reluctant acceptance by Mr Skinner that there was no practical alternative. Pressure of circumstances does not amount to undue pressure or duress.

78. Although Mr Skinner may well have had discussions with Mr Thompson about the possibility of taking the question of the tax liability to the Tribunal, there was nothing in the evidence before us to suggest that he had communicated anything to HMRC to indicate a wish to withdraw from the s 54 agreement.

79. We find that Mr Skinner and HMRC came to an agreement under s 54 TMA 1970, that there was no undue pressure or duress on him to do so, and that he did not give notice of a desire to withdraw from this agreement.

(c) Points on both appeals

80. The suggestion that there may have been undue pressure or duress appears to have been based on Mr Boyle's indication that, in order for him to refer disputes as to liability for interest to the appropriate person, it would be necessary for the tax to have been paid. However, as Mr Hillier submitted, the agreements to pay the tax had

already been entered into; it could not therefore be regarded as duress for HMRC to ask for payment before objections to payment of interest could be considered.

81. At the beginning of the hearing we explained to the Appellants that the Tribunal was independent, as part of a government department separate from HMRC, and that the tribunal's jurisdiction was statutory. As a result, it was only possible for the tribunal to deal with matters within its statutory jurisdiction, and various general powers available to the courts were not available to the Tribunal.

82. Disputes as to interest are not within the tribunal's jurisdiction. This was confirmed by a decision of the Upper Tribunal (Judge Herrington) in *Revenue and Customs Commissioners v Gretton and another* [2012] UKUT 261 (TCC). At [13] Judge Herrington indicated that there was no discretion on the part of the First-tier Tribunal to determine that interest should not be payable.

83. A number of the other matters raised by the Appellants fall outside the Tribunal's jurisdiction. Issues relating to the manner in which matters were handled may fall within HMRC's complaints procedures; it is not open to us to consider them. For example, the Appellants contended that HMRC had treated them differently from others involved in the Bridgewater scheme. However, the question whether individual taxpayers' treatment is different from that of other taxpayers, whether of a particular group or class or more generally, is outside our jurisdiction. As HMRC submitted, the question for the individual taxpayer is whether the correct amount of tax has been determined or agreed; this is not affected by the treatment of other taxpayers.

84. The Appellants submitted that they had been given incorrect information concerning appeals to the Tribunal. They stated that at the time of discussing the review officer's conclusions, they had been told that it would be costly to appeal and would necessitate engaging legal assistance. Later they were told that it was too late for them to appeal; they did not have any information on this and therefore did not understand the reason until they saw HMRC's submissions concerning agreements under s 54 TMA 1970. It had not been until they made a call to HMRC's' helpline that they realised that they could appeal their case to the Tribunal. HMRC had informed them that it would not involve cost to pursue an appeal.

85. We think it appropriate to comment on the latter information given by the HMRC helpline. In principle it is possible for appellants in person to conduct their own cases, the only cost involved being their time and expenses in preparing for the hearing and travelling to it. Where a case is more complicated, it may prove too difficult for an appellant to deal with it without some form of professional assistance; attempting to present a case without such help may put the appellant at a disadvantage, even though the Tribunal will try to ensure that the appellant's case is fully and properly considered. Where professional assistance is given, this involves a greater level of cost.

86. Cost is one of the factors which parties take into account when deciding whether to pursue an appeal as far as a hearing, or whether it is safer to arrive at some form of

settlement before that stage. There was no information as to the reasons for the "test case" not being taken as far as a Tribunal hearing, but the taxpayer and his advisers presumably evaluated the costs and risks of proceeding, and decided instead to reach an agreement. If the Appellants' cases had proceeded to a hearing, this would have involved them considering the costs and risks and comparing these with the liabilities set out in Mr Boyle's letters.

87. We do not think that the Appellants were given misleading information concerning the possible costs of a Tribunal appeal.

Result of the application

88. We agree with HMRC's application that the appeals should be struck out under Rule 8(2) of the Tribunal Rules; separate Directions will be issued to confirm this.

89. Our decision to strike out the appeals makes it unnecessary for us to consider fully the alternative applications made by HMRC for directions that each of the Appellants should serve on HMRC either further and better particulars or a statement of case in relation to his appeal. We simply comment that we agree with HMRC's submissions that—

(1) the letters attached to the respective Notices of Appeal do not specify any reason for the Appellants' belief that the decision under appeal is incorrect, and

(2) those letters do not constitute valid grounds of appeal and list a number of matters of which the resolution is not appropriate to the Tribunal, but instead should be dealt with by means of a complaints procedure.

Right to apply for permission to appeal

90. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN CLARK
TRIBUNAL JUDGE

RELEASE DATE: 20 August 2014