



TC06821

Appeal number: TC/2017/06328

INCOME TAX – appeal in relation to a claim for repayment of tax withheld from a sum paid in connection with the termination of employment – application to strike out the appeal on the basis that the First-tier Tribunal does not have jurisdiction to hear the appeal – application upheld

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KAUSHIK PRAMANIK

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE TONY BEARE

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on
26 October 2018**

The Appellant represented himself

Ms A Biney, Officer HM Revenue and Customs, for the Respondents

DECISION

Introduction

5 1. This decision relates to an application by the Respondents to strike out an appeal which has been made by the Appellant in relation to income tax which was deducted by the Appellant's former employer, The Bank of New York Mellon ("BONY"), from a payment which BONY made to the Appellant on 28 May 2017. The payment was made in connection with the cessation of the Appellant's
10 employment by BONY on 12 February 2017.

2. The Respondents have applied for the appeal to be struck out under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") on the basis that the First-tier Tribunal does not have the jurisdiction to hear the appeal. Rule 8(2)(a) provides that the First-tier Tribunal must
15 strike out an appeal if, inter alia, it does not have jurisdiction in relation to the proceedings.

Background

3. The background to the present application by the Respondents is as follows.

4. When the Appellant left his employment with BONY, he was paid the sum of
20 £16,279.00 as compensation for the loss of his employment. The settlement agreement between the Appellant and BONY stipulated that BONY "will deduct such income tax and employee's National Insurance contributions as it is required by law to deduct" and BONY duly withheld the sum of £6,141.41 from the payment.

5. Since leaving that employment, the Appellant has been unemployed and is
25 accordingly in serious financial straits.

6. The Appellant believes that his employer was wrong to withhold tax from the payment because the payment was exempt from income tax in its entirety. He has therefore made a claim for the repayment of all of the tax that was withheld from the payment.

7. The Respondents have repaid to the Appellant part of the tax so withheld (the sum of £5,186.41) but that was on the basis that part of the payment fell within the Appellant's personal allowance of £11,500.00 for the tax year of assessment ending 5 April 2018. So far as the rest of the withheld tax is concerned – the sum of £955.00, the Respondents have refused to repay the relevant amount.

8. The reason given by the Respondents for their approach is that BONY
35 "describes the amount as a payment after leaving and not as a redundancy payment". The Respondents' position is that the only way for the Appellant to reclaim the tax is to go back to BONY and persuade BONY to report the relevant payment in a different way.

9. In the light of this response by the Respondents, the Appellant has made an appeal to the First-tier Tribunal seeking a decision which requires the Respondents to repay the balance of the withheld tax to him.

5 10. By the application which is the subject of this decision, the Respondents seek to strike out that appeal on the ground that there is no right in the tax legislation to make an appeal on those terms and therefore that the First-tier Tribunal does not have the jurisdiction to entertain the appeal.

10 11. The short answer to the application is that the Respondents are right in their contention. As things stand at present, there is no provision in the tax legislation which confers on the Appellant a right of appeal against the Respondents' refusal. In particular, when one looks at the right of appeal in Section 31 Taxes Management Act 1970 (the "TMA"), the list of appealable decisions does not include a refusal by the Respondents to give effect to a claim for a repayment of tax. So, with considerable regret, I am compelled to uphold the application and to strike out the Appellant's
15 appeal.

12. Having said that, since the hearing of the application, the Respondents have written to the First-tier Tribunal in the following terms:

"s711(1) ITEPA03 states

20 "A person who has PAYE income for a tax year in respect of which deductions or repayments are made under PAYE regulations may by notice requires an officer of Revenue and Customs to give that person a notice under section 8 of TMA 1970 (personal return) for the tax year."

This gives PAYE taxpayers a statutory right to request a notice to file.

HMRC guidance at EIM71410 states

25 "Taxpayers who do not normally self-assess will be brought into self-assessment for any tax year where there is a contentious point, for example a deduction for expenses, where the matter will proceed to the First-tier Tribunal.

30 Taxpayers present their view of the matter in the self-assessment. Then, following an HMRC enquiry into the self-assessment, if the matter is not resolved the point can go to the First-tier Tribunal and beyond by way of a taxpayer appeal against an HMRC amendment to the self-assessment."

So where we have an informal dispute with a PAYE taxpayer they have the right to request and complete a self-assessment return filling in the relevant details which would result in a repayment. HMRC can then enquire into the return using s9A TMA 1970 enquiry procedures and issue a closure notice which would give the taxpayer an appealable decision.

35 The Respondents note the Appellant has submitted a return for the tax year in dispute 2017/18. The Respondents agree that in this case an enquiry can be opened into the Appellants return and a closure notice issued immediately allowing the taxpayer to make a valid appeal against the closure notice."

13. I am grateful to the Respondents for reconsidering their position in this instance. The upshot of the above is that the Appellant should shortly receive a closure notice from the Respondents, informing him that the Respondents do not agree that the payment he received from BONY on the termination of his employment qualified for an exemption from tax and amending the Appellant's tax return in respect of the tax year of assessment ending 5 April 2018. At that point, the Appellant should, as soon as reasonably practicable, and in any event within 30 days of the date of the closure notice, submit an appeal to the First-tier Tribunal against that closure notice and amendment in accordance with the instructions accompanying the closure notice.

14. Given the financial position of the Appellant and the time which it has already taken to get to this point, I would be grateful if the Respondents could issue the closure notice as soon as practicable, so that the new appeal can be expedited.

15. 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 Rules. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 14 November 2018