



TC07046

Appeal number: TC/2019/00723

INCOME TAX – PAYE – attempt by taxpayer to appeal against P800 – whether there is a right of appeal against a P800 form – no – whether Tribunal has jurisdiction – no – whether appeal can be admitted – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ZEUS MITCHELL

Appellant

- and -

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

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal disposed of these proceedings on 22 February 2019 without a hearing under the provisions of Rule 29(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, having first read the Notice of Appeal (with enclosed P800) filed by the Appellant on 1 February 2019, returned by the Tribunal on 5 February 2019 and resubmitted by the Appellant on 12 February 2019.

DECISION

Introduction

1. The issue I have been asked to determine is whether the Tribunal has jurisdiction to consider an appeal which the Appellant wishes to make against a P800 form issued to her by HMRC in July 2018. With her original Notice of Appeal, received by the Tribunal on 1 February 2019, the Appellant had provided a copy of the P800 which showed that she had underpaid £1.80 in tax in 2017/18.

2. The Appellant's Notice of Appeal was returned by the Tribunal on 5 February 2019, with the request that the Appellant provide a copy of an appealable decision. On 12 February 2019, the Tribunal again received the Appellant's Notice of Appeal with P800, but without a copy of any other decision which she wished to appeal against.

3. On 22 February 2019, I was asked to consider whether the Appellant's appeal could be admitted by the Tribunal. I concluded that the Tribunal did not have jurisdiction and so the appeal could not be admitted. My conclusion was sent to the Appellant by letter dated 26 February 2019.

The Tribunal letter of 26 February 2019

4. In the Tribunal's letter of 26 February 2019, I explained that the Tax Chamber of the Tribunal did not have jurisdiction to consider every decision made by HMRC, and that not every decision made by HMRC carried a right of appeal.

5. I noted that the Appellant had sent a P800 with her Notice of Appeal and that this showed she had underpaid tax of £1.80 in 2017/18. I informed the Appellant that there was no right of appeal against a P800 and that, as the Tribunal did not have jurisdiction, it could not admit the appeal. I suggested that the Appellant should approach HMRC directly with her challenge to their conclusion that she had underpaid tax, and noted that she had the right to appeal to the Tribunal against any subsequently issued appealable decision of HMRC.

6. I also noted that the Appellant claimed to be owed £20,000 in tax credits, and also wished to be awarded £50,000 in compensation by HMRC. In respect of this first point, I suggested to the Appellant that she could apply to the Social Entitlement chamber of the First-tier Tribunal if she had received a decision in respect of her entitlement to tax credits which she wished to challenge.

7. Finally, I noted the Appellant's request that her appeal to the Tax Chamber be transferred to the High Court so she could be awarded compensation. As there was no appealable matter, I declined that request. I also noted that there was no explanation of why a transfer should be made and suggested that a complaint about HMRC's conduct should be addressed to HMRC, and that the Appellant could herself make an

application direct to the High Court if she considered that an appropriate venue for her claim for compensation.

This document

8. On 8 March 2019, the Tribunal received the Appellant's application for permission to appeal to the Upper Tribunal against the decision contained in the Tribunal's letter dated 26 February 2019. However, Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 requires that an appeal may be made only against a full decision, and the letter of 26 February 2019 was not a full decision. Therefore, I have treated the Appellant's application as being an in-time request under Rule 35(4) for a full decision to be issued to her. This document is that full decision so the Appellant is now able to apply for permission to appeal if she wishes to do so.

The Tribunal's jurisdiction

9. This is not the first occasion on which the Tribunal has considered the status of a P800 and whether it is able to accept an appeal against such a document. In *Prince and others v HMRC* [2012] UKFTT 157, the then Chamber President, Judge Colin Bishopp, considered this issue. Judge Bishopp decided that a P800 was an administrative measure, and that a taxpayer's liability under PAYE was determined by a coding notice which gave legal effect to the conclusions in a P800. Judge Bishopp noted that a taxpayer had a right of appeal to HMRC against a coding notice. Judge Bishopp also decided that a P800 was not an assessment and could not be treated as an assessment as it did not meet the statutory definition (set out in Section 30A Taxes Management Act 1970). Judge Bishopp concluded that a taxpayer did not have a right of appeal to the Tribunal (or HMRC) against a P800.

10. Although it was not a point made by the Appellant in this case, in *Prince* Judge Bishopp also decided that the Tribunal did not have jurisdiction to consider whether taxpayers should be given the benefit of an extra statutory concession because such an application had to be made direct to the Administrative division of the High Court. As a result of reaching those conclusions, Judge Bishopp determined that there was nothing the Tribunal could decide and he struck out the appeal. Notably, Judge Bishopp did not transfer the appeal in *Prince* to the High Court.

11. It is not clear to me that a coding notice (issued to a taxpayer during the relevant tax year) is always the appropriate statutory route for an employed taxpayer and HMRC to resolve a dispute about underpayment of tax which has arisen after the end of the relevant tax year. Where coding out was not possible, tax returns were sometimes required by HMRC, or were filed on a voluntary basis by taxpayers; more recently HMRC have been able to issue Simple Assessments which carry a right of appeal. Nevertheless, I do agree with Judge Bishopp that a P800 is not an appealable decision against which a taxpayer can appeal.

12. I conclude that the Appellant has no right of appeal against the P800 issued to her in July 2018. As the P800 is not appealable, and the Appellant has not provided a

copy of any other decision of HMRC which she wishes to challenge, there is no appeal over which the Tax Chamber of the First-tier Tribunal has jurisdiction.

How the Tribunal should proceed when it has no jurisdiction

13. Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides:

(2) The Tribunal must strike out the whole or part of proceedings if the Tribunal –

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

14. Rule 5(3)(k)(i) provides:

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction-

(k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change in circumstances since the proceedings were started-

(i) the Tribunal no longer has jurisdiction in relation to the proceedings;

15. The Appellant's appeal had not proceeded as far as being admitted but I decided that, for the purposes of deciding how to proceed, it would be appropriate to consider what the position would be if the appeal had been admitted. If the Appellant's appeal had been admitted then, once I had concluded that the Tribunal had no jurisdiction, Rule 8 would have required me either to strike out the appeal or transfer it if I considered that another tribunal had jurisdiction.

Whether the appeal can be transferred to another court or tribunal

16. I consider it clear that Rule 5(3)(k) provides for what should happen in cases where the Tax Chamber of the First-tier Tribunal once had jurisdiction but, because of a change in circumstances, it no longer has jurisdiction. That is not the case with the Appellant's appeal as there was no point at which the Tax Chamber had jurisdiction.

17. Nevertheless, under the Tax Chamber's general case management powers, I considered whether the Appellant's appeal revealed the possibility of a valid appeal which could have been made to another court or tribunal, to which the Appellant's appeal could be transferred.

18. The Appellant had not provided a copy of a decision relating to entitlement to tax credits, and so I was not satisfied that the Social Entitlement Chamber of the First-

tier Tribunal had jurisdiction. If such a decision exists, the Appellant is able to file an appeal directly to the Social Entitlement Chamber.

19. The Appellant had requested that her appeal be transferred to the High Court but had not set out the basis of her claim to be entitled to compensation or explained why she required the Tax Chamber of the First-tier Tribunal to admit her appeal and then transfer it, rather than the Appellant filing a claim directly to the relevant division of the High Court. In the absence of an explanation of the underlying basis of her claim, I was not satisfied that any division of the High Court had jurisdiction to hear the claim which the Appellant proposed to bring. I was also conscious that in *Prince*, where the appellant had articulated an arguable case, Judge Bishopp had apparently concluded that transfer was not appropriate. I concluded that it would not be appropriate for me to transfer the Appellant's appeal to the High Court.

20. Therefore, I refused the Appellant's application for the appeal to be transferred to the High Court. If the Appellant considers she has an arguable claim which she considers should be heard in the High Court, she is able to file that claim directly to the appropriate division of the High Court.

Strike out

21. I had concluded that the P800 is not an appealable decision. It follows that the Tribunal does not have jurisdiction to admit an appeal which purports to be an appeal against a P800. The Appellant had not provided any decision other than the P800. I concluded that there was no appealable matter before the Tax Chamber, and that there was no appealable matter which could be transferred to another court or tribunal.

22. Having reached those conclusions, I decided it would not be a good use of Tribunal time and resources for the appeal to be admitted, processed and subsequently struck out. Therefore, on 22 February 2019, I decided that the appeal submitted by the Appellant should not be admitted. On 26 February 2019, the Appellant was notified of this decision and the Tribunal file was closed.

Right to apply for permission to appeal

23. 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.

**JANE BAILEY
TRIBUNAL JUDGE**

RELEASE DATE: 18 MARCH 2019