[2020] UKFTT 0097 (TC)

TC07591

Appeal number: TC/2012/03049

INCOME TAX – tax avoidance scheme – quantification of tax payable – mistakes by HMRC when informing appellant of amount owed – are HMRC bound by their erroneous statements – estoppel and legitimate expectation – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PHILIP FEARN **Appellant**

- and -

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

TRIBUNAL: JUDGE ALEKSANDER
MICHAEL BELL

Sitting in public at Taylor House, London EC1 on 17 June 2019

The Appellant in person

Ravi Mehta, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mr Fearn in relation to the quantification of the tax he owes for the tax year 2003/4 in respect of his participation in a tax avoidance scheme which utilised capital redemption insurance policies.

2. Mr Fearn represented himself. HMRC were represented by Mr Mehta. We heard evidence from Mr David Jackson, an HMRC officer, and from Mr Fearn. In addition, documentary evidence was produced.

Background Facts

3. The background facts are not disputed, and we find them to be as follows.

4. The background to this appeal is a tax avoidance scheme utilising capital redemption policies ("CRPs"). The scheme is described in the decision of this Tribunal in *Abbeyland v HMRC* [2013] UKFTT 287 (TC).

5. Mr Fearn's evidence acknowledged that he had entered into a tax avoidance scheme that was sold to him by his then tax advisors, Smith & Williamson. Mr Fearn in his evidence said that he does not know, and never knew, the details of the scheme and how it achieved its purported saving in tax. His evidence was that the scheme was backed by an opinion of counsel. But Mr Fearn accepts that the scheme was not effective, and that tax is therefore payable by him. Nor does Mr Fearn dispute HMRC's calculation of his taxable income. Given that neither the operation of the scheme, nor the calculation of the taxable income arising from its operation, are in issue before us, we do not propose to address them further in this decision.

6. The only issue in dispute is whether HMRC are bound by mistakes they made in communicating to Mr Fearn the amount of additional tax that he owed.

7. On 31 January 2005, HMRC received Mr Fearn's self-assessment tax return for 2003/4, signed by him on 8 January 2005. The return declared an overpayment of tax of £5718.88.

8. Under its "process first, check later" procedure, HMRC paid Mr Fearn £5718.88 on 7 March 2005. Mr Fearn does not dispute that he received this payment from HMRC, and we find that he did receive it.

9. On 28 September 2005, HMRC wrote to Mr Fearn opening an enquiry into his self-assessment tax return for 2003/4. The enquiry was concluded on 16 November 2011 with the issue of a closure notice under s28A, Taxes Management Act 1979 ("TMA"). The relevant provisions of the closure notice were as follows:

> **My conclusions**
>
> Is that Capital Losses claimed of £303,301 under the CRP Mark 2 Scheme are not available. There is not balance of losses to carry forward.

I have amended your Self Assessment return to reflect my conclusion.

- It previously showed that you had paid £5,718.88 too much tax
- It now shows that you are due to pay £97,365.70 tax
- The difference is £103,084.58

I enclose details of my calculations.

I have also updated your Self Assessment statement to reflect this change. As of 16 November 2011 your statement shows that you are due to pay a total of £133,692.71. This amount includes all the items, not just the results of my check. This figure may change on a daily basis if other amounts become due or interest is added. I have enclosed a copy of your statement.

If you have any questions or need more information, please phone me on the number at the top of this letter or write to me at the above address.

What happens next?

Please pay £133,692.71 by 16 December 2011 […]

10. As no partial closure notice had previously been given, this closure notice was a "final closure notice" for the purposes of s28A(1B) TMA.

11. Mr Fearn appealed against the closure notice on 6 December 2011, on the grounds that the enquiry had been closed prematurely in light of pending litigation relating to the tax treatment of CRPs.

12. On 12 December 2011, HMRC wrote to Mr Fearn again, updating the amount owed to take account of his accountant's computation of a capital gain and other adjustments to his computation

13. The relevant provisions of that letter (which was described as a "closure notice" under s28A TMA):

My conclusions

Is that your previous Accountant's computation of the Capital Gain of £265,232 after the annual exemption can be accepted

I have amended your Self Assessment return to reflect my conclusion.

- It previously showed that you were due to pay £97,365.70 tax
- It now shows that you are due to pay £95,498.90 tax
- The difference is £1866.80

I enclose details of my calculations.

I have also updated your Self Assessment statement to reflect this change. As of 12 December 2011 your statement shows that you are due to pay a total of £131,479.89. This amount includes all the items, not just the results of my check. This figure may change on a daily basis if other amounts become due or interest is added. I have enclosed a copy of your statement.

> If you have any questions or need more information, please phone me on the number at the top of this letter or write to me at the above address.
>
> **What happens next?**
>
> Please pay £131,479.89 by 11 January 2011 […]

14. There are several points to note about the 12 December letter.

15. First, the 12 December letter describes itself as a "closure notice". HMRC submit that only the letter of 16 November was a closure notice, and a mistake was made in the 12 December letter to describe it as a closure notice. Mr Fearn's case is that the 12 December letter is the only closure notice that applies to him, and the 16 November letter should be ignored.

16. Second, the comparison made in the letter in the amount of the "tax due" is not with Mr Fearn's original self-assessment return, but with his self-assessment return *after* taking account of the amendments made by the closure notice dated 16 November 2011. But we note that the amount stated in the letter as being payable (£131,479.89) does take account of the overpayment of £5,718.88 claimed in the original self-assessment.

17. Third, the payment date is stated as being 11 January 2011 – this is clearly and obviously a typographical error, and should have been 11 January 2012. Neither party has raised any issue with this error, and nothing turns on this point.

18. On 21 December 2011, HMRC wrote to Mr Fearn offering him a review. Because of the Christmas holidays, HMRC extended the deadline for him to request a review or file his appeal with the Tribunal to 31 January 2012. This deadline was subsequently extended to 15 February following a request from Mr Fearn, as he was going abroad.

19. On 2 February 2012, following a telephone call, HMRC wrote to Mr Fearn with details of the tax owed as follows:

> You asked for a note of the final and correct position of tax and interest arising on withdrawal of the capital redemption policy losses in 2003/2004:
>
> | | |
> |---|---|
> | The revised figure of tax due is | £95,498.90 |
> | Interest under S86 Taxes Management Act 1970 | |
> | from the original due date 31/01/2005 to the | |
> | date of your Certificate of Tax Deposit 17/10/2005 | £4,975.09 |
> | | £100,473.99 |
> | Less Certificate of Tax Deposit | £100,000.00 |
> | Balance to pay | £473.99 |

20. It can immediately be seen that the amounts shown in this letter do not correspond to the amounts shown as payable in the 12 December letter, and that this is because they do not take into account the previous repayment of tax of £5718.88.

21. Mr Fearn did not seek a review, and notified his appeal to the Tribunal on 9 February 2012. The amount of tax in dispute was stated as being £100,473.99 and the date of the challenged decision was stated as 12 December 2011. The appeal was on the grounds that HMRC was premature in seeking payment while parallel proceedings concerning CRPs had not been concluded. The appeal was stayed behind the *Abbeyland* litigation.

22. Following the resolution of the *Abbeyland* appeal in HMRC's favour, Mr Fearn elected to continue with his appeal. In the course of correspondence relating to the appeal, HMRC wrote to Mr Fearn on 20 May 2015 following a request from Mr Fearn for a calculation of the additional liability due for 2003/4 in consequence of the withdrawal of the CRP losses. The relevant parts of that letter are as follows:

> I would next refer you to the enclosed calculation of your tax liability for 2003/4 and would draw your attention to page 2 which shows the Capital Gains Tax liability and your overall tax liability of £95,498.90
>
> I also enclose a copy of the letter sent to you on 2 February 2012 by my colleague Gillian Duffy and which provides a summary of the additional liability to tax and interest arising …

23. It can be seen that the 20 May 2015 letter repeats the mistake in the 2 February 2012 letter by not taking into account the previous repayment of £5718.88.

24. Having identified these errors, HMRC telephoned Mr Fearn on 26 May 2015 to inform him about the mistake, and gave a more detailed explanation in a letter dated 27 May 2015. HMRC apologised to Mr Fearn for the error. This letter states that the amount owed by Mr Fearn was £101,217.78 plus accrued interest to 30 June 2015 (an assumed settlement date) of £5793.80.

25. There was a meeting on 19 June 2015 between HMRC and Mr Fearn. HMRC wrote to Mr Fearn on 24 June, following that meeting, setting out a proposal for settlement. HMRC had identified further capital losses which had not previously been taken into account, and revised Mr Fearn's liability downwards to a total of £104,959.60 – being £99,762.40 tax and £5197.20 interest.

26. On 4 December 2015, Mr Fearn was issued with a Follower Notice under Part 4, Chapter 2, Finance Act 2014 ("FA 2014") and an Accelerated Payment Notice under Part 4, Chapter 3, FA 2014. The APN was for £99,762.40. On 15 April 2016, Mr Fearn surrendered a Certificate of Tax Deposit of £100,000 to be set against the APN amount.

27. On 25 August 2016, Mr Fearn emailed HMRC with a partially completed copy of a corrective action form (CADAcc348) stating

> I wish to withdraw my appeal TC/2012/03049. I have already settled all liability arising from this arrangement via accelerated payment.

Mr Fearn stated that he had "left out the figures in Part 2 because I am relinquishing all the denied advantage which has been paid in any event".

28. On 1 September 2016, HMRC emailed Mr Fear confirming receipt of the CADAcc348, but stating that the Part 2 needed to be completed with the amount of additional tax due. She stated that this was £99,763.40. But internal HMRC emails state that the correct figure was £99,762.40.

29. Correspondence between Mr Fearn and HMRC followed, in the course of which various offers of settlement were made and withdrawn. On 18 August 2017 Mr Fearn paid £437.99 by cheque to HMRC, which HMRC have treated as a payment on account.

30. On 15 November 2017, HMRC's Solicitors Office wrote to Mr Fearn setting out their view of the correct amount of tax due in order to settle this appeal and avoid a hearing. This breaks down as follows:

Tax liability	£94,261.52
Tax previously refunded	£5,718.88
	£99,980.40
Interest	£5,208.56
	£105,188.96
Certificate of Tax Deposit	(£100,000.00)
Cheque	(£437.99)
Balance due	£4,714.97

The submissions of the parties

31. Mr Fearn disputes the amount that he owes to HMRC on the basis that HMRC are bound by the figures shown in their letter of 12 December 2011, the telephone call and subsequent letter of 2 February 2012, and the letter of 20 May 2015. Mr Fearn submits that HMRC are now estopped from claiming any tax in excess of the amounts stated in those letters and telephone call.

32. Mr Fearn submits that his only liability to tax is £95,498.90, being the amount set out in HMRC's letter of 12 December 2011, and confirmed in their letter of 2 February 2012.

33. Mr Mehta accepts that there were repeated errors in the amounts notified by HMRC to Mr Fearn as payable by him. This has been the subject of a complaint by Mr Fearn, which has been addressed through HMRC's complaints procedure, and Mr Fearn was compensated by HMRC for professional costs that he had incurred. HMRC have apologised for their mistakes.

34. Mr Mehta submits that the only relevant statement of the total quantum of tax owed by Mr Fearn is the final closure notice dated 16 November 2011. This notice was a final closure notice for the purposes of s28A TMA and brought the enquiry to a close. The 12 December letter cannot be a closure notice for the purposes of the TMA, as the enquiry had already been closed by the 16 November letter.

35. But, says Mr Mehta, the provisions of s50(6) and (7) TMA (which are set out in the Annex) require the Tribunal to determine the correct amount of tax payable by Mr Fearn, and to either reduce or increase the amount of the self- assessment accordingly. Mr Mehta submits that the purpose of s50 TMA is to ensure that the taxpayer pays the correct amount of tax, regardless of the amount that has been assessed or self-assessed. Accordingly, says Mr Mehta, our role in this appeal is a narrow one: to determine whether, on the balance of probabilities, HMRC have demonstrated that Mr Fearn was undercharged. The amount stated in the 16 November closure notice (or, for that matter, the 12 December letter) does not matter. In support of these submissions, we were referred to the decisions of the of the Court of Appeal in *Glaxo Group v IRC* [1996] STC 191, of the Upper Tribunal in *HMRC v CM Utilities* [2017] UKUT 305 (TCC), and of this Tribunal in *Alway Sheet Metal* [2017] UKFTT 198 (TC). Both *CM Utilities* and *Alway Sheet Metal* refer to the *Glaxo Group* decision of the Court of Appeal.

36. The Upper Tribunal in *CM Utilities* confirms the power of this Tribunal to increase tax assessments.

> 35. In our judgment, the effect of statutory provisions of the TMA (and by extension those relating to NICs) is clear and supported by authority. In a case where HMRC give notice of objection to the appeal being treated as withdrawn, and puts the case for an increase, the FTT retains its jurisdiction, and it continues to have a duty, to increase the assessment or determination in accordance with s 50(7) (and analogous provisions) to the extent that it decides that the appellant has been undercharged by the original assessment or determination.

37. In *Alway Sheet Metal* the Tribunal stated as follows:

> 113.As noted at [91], the legislative basis for the Tribunal's power to increase an assessment is found in s50(7) of TMA 1970. In *Glaxo Group Ltd and others v Inland Revenue Commissioners* [1996] STC 191, Millett LJ described that power in the following terms:
>
> > Section 50(7) of the Taxes Management Act 1970, however, preserved the right, and as it seems to me the duty, of the commissioners to increase the assessment on the hearing of the taxpayer's appeal if the evidence shows this to be appropriate.
>
> 114.I therefore consider that the Tribunal has the power, and indeed the duty, to increase an assessment if satisfied that the amount assessed is an undercharge. Ms Nathan submitted that, in such a case, the taxpayer still bore the burden of proving the correct amount of the assessment due. Mr Hackett submitted that, where HMRC were relying on s50(7), HMRC had the burden of proof by applying the general principle that a person asserting a particular fact generally had the burden of proving it. However, neither Mr Hackett nor Ms Nathan was able to refer to any authority in support of their respective propositions.
>
> 115.I have concluded that the statutory words of s50(7) suggest that, before I can increase the assessment, I must be satisfied on a balance of probabilities that the taxpayer is undercharged and that, as Mr Hackett submits, HMRC bear the burden of proof. Some support for that proposition is found in the following extract from the decision of the

High Court in *Duchy Maternity Ltd v Hodgson (Inspector of Taxes)* [1985] STC 764 in which Walton J considered whether HMRC are entitled to make a further assessment in circumstances in which they considered an earlier assessment was insufficient:

> There is no tie-up that I can necessarily see between s 29 and s 50. Indeed, from a purely practical point of view one can see great advantages in the Revenue, albeit after an appeal has been lodged, putting in an additional notice of assessment which brings the figure on which they will rely bang up to date; and it also has the important advantage from the Crown's point of view that where an assessment has been put in the onus is shifted to the taxpayer, if he is appealing against an assessment, to prove, show and demonstrate that it is wrong.

38. Mr Fearn submits that

> HMRC is bound by natural justice and public law principles, and that indeed the Tribunal has a legal obligation to ensure common law principles of fairness are applied. The Tribunal definitely has Judicial Review jurisdiction.

39. Mr Fearn, at least in his oral submissions at the hearing, acknowledges that this Tribunal has no power to provide a judicial review remedy in respect of any legitimate expectation that Mr Fearn might have that arises out of the mistakes in HMRC's letters. Rather, Mr Fearn submits that the actions of HMRC are *ultra vires* on the grounds that they are estopped from pursuing the tax in dispute. Accordingly, this Tribunal should reduce the amount of his self-assessment to the amount of tax that he has already paid.

40. In his skeleton argument Mr Fearn cited *Spencer Bower: The Law relating to Estoppel by Representation*, 4th edition, 2004 at para I.2.2 (although, unfortunately, a complete copy of the relevant chapter of the book was not put before us):

> Where one person ('the representor') has made a representation of fact to another person ('the representee') in words or by acts or conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive) and with the result of inducing the representee on the faith of such representation to alter his position to his detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time, and in proper manner, objects thereto.

41. Mr Fearn submits that public bodies are bound by the principle of estoppel and cites *Wade and Forsyth* on *Administrative Law* (11th edition) and *Wade* (6th Edition) that a litigant can exert equity and public law principles (including estoppel) against a public authority – and that any decision by a public authority must be reached by a procedure that respects principles of natural justice and must be exercised intra vires and in accordance with fair procedures. A purported exercise of a power that is contrary

to these principles is *ultra vires* and a nullity – and that equitable estoppel is a rule of natural justice.

42. We were taken by Mr Fearn to Lord Scarman's speech in *R v Inland Revenue Commissioners, ex parte. Preston* [1985] 1 AC 835 where he said:

> But cases for judicial review can arise even where appeal procedures are provided by Parliament. The present case illustrates the circumstances in which it would be appropriate to subject a decision of the commissioners to judicial review. I accept that the court cannot in the absence of special circumstances decide by way of judicial review to be unfair that which the commissioners by taking action against the taxpayer have determined to be fair. But circumstances can arise when it would be unjust, because it would be unfair to the taxpayer, even to initiate action under Part XVII of the Act of 1970. For instance, as my noble and learned friend points out, judicial review should in principle be available where the conduct of the commissioners in initiating such action would have been equivalent, had they not been a public authority, to a breach of contract or a breach of a representation giving rise to an estoppel.

43. We were also referred to an article by Renata Petrylaite "Can the Doctrine of Equitable Estoppel be applied against a Government" in the *International Journal of Baltic Law* (February 2004, Volume 1, No 2) which asserts that equitable estoppel can and should be used against the government, and to an article by Michael Firth "Why the First-Tier Tribunal Definitely has Judicial Review Jurisdiction" in *Grays Inn Tax Chambers Review* (November 2016, Volume XIV, No 1).

44. Mr Fearn referred us to a raft of authorities going back to *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147 supporting the submission that decisions by public authorities must respect the principles of natural justice. But he did not cite to us to any relevant passages in those authorities.

45. Mr Mehta's response is that this Tribunal has no jurisdiction to exercise a judicial review function or to apply common law or equitable principles of fairness, such as estoppel, giving effect to any legitimate expectation that Mr Fearn claims to have, and we were referred to the decision of the Upper Tribunal in *Noor v HMRC* [2013] UKUT 71 (TCC) where the Tribunal says at [87]:

> In our view, the F-tT does not have jurisdiction to give effect to any legitimate expectation which Mr Noor may be able to establish in relation to any credit for input tax. We are of the view that Mr Mantle is correct in his submission that the right of appeal given by section 83(1)(c) is an appeal in respect of a person's right to credit for input tax under the VAT legislation. Within the rubric "VAT legislation" it may be right to include any provision which, directly or indirectly, has an impact on the amount of credit due but we do not need to decide the point. Thus, if HMRC have power (whether as part of their care and management powers or some other statutory power) to enter into an agreement with a taxpayer and that agreement, according to its terms, results in an entitlement to a different amount of credit for input tax than

> would have resulted in the absence of the agreement, the amount ascertained in accordance with the agreement may be one arising "under the VAT legislation" as we are using that phrase. In contrast, a person may claim a right based on legitimate expectation which goes behind his entitlement ascertained in accordance with the VAT legislation (in that sense); in such a case, the legitimate expectation is a matter for remedy by judicial review in the Administrative Court; the F-tT has no jurisdiction to determine the disputed issue in the context of an appeal under section 83. As Mr Mantle puts it, the jurisdiction of the F-tT is appellate (i.e. on appeal from a refusal of HMRC to allow a claim). The F-tT has no general supervisory jurisdiction over the decisions of HMRC.

46. We were also referred by Mr Mehta to the decision of this Tribunal in *Alway Sheet Metal v HMRC* which considers some of the issues raised in *Noor* in relation to direct taxes. The Tribunal says:

> **Whether the Tribunal has jurisdiction to consider the procedural argument**
>
> 92. Mr Hackett made eloquent submissions on the effect of a number of authorities on the extent of the Tribunal's jurisdiction including *Oxfam v Revenue and Customs Commissioners* [2010] EWHC 3078 (Ch), *Hok v Revenue and Customs Commissioners* [2012] UKUT 363 (TCC), *Foulser v Revenue and Customs Commissioners* [2013] UKUT 38 and *Noor v Revenue and Customs Commissioners* [2013] UKUT 71.
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> 93. Mr Hackett submitted that there is a difference of judicial opinion on whether the Tribunal is able to take account of arguments based on public law. He submitted that *Oxfam* is authority for the proposition that the Tribunal can entertain public law arguments in appropriate circumstances. He acknowledged that later decisions of courts of co-ordinate jurisdiction (in *Hok* and *Noor*) could be read as reaching a different conclusion, although he submitted that, on a close reading, the points of difference were not as significant as might appear. He also acknowledged that the Court of Appeal in *BT Pension Scheme v Commissioners for HMRC* [2015] EWCA Civ had made apparently broad statements to the effect that the Tribunal has no power to consider matters of "legitimate expectation". However, he argued that read in context, the Court of Appeal was simply confirming that the Tribunal had no original jurisdiction to consider legitimate expectation and it remained possible for Parliament, in statutory provisions dealing with appeals, to confer such a jurisdiction on the Tribunal.
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> 94. At the heart of Mr Hackett's submissions was the proposition that, notwithstanding the points made at [93], there is no impediment to the Tribunal considering questions of private law, and he submitted that *Noor* made this clear. Since he characterised the appellants' arguments as relating to matters of private law, he submitted that the Tribunal could consider them.
>
> 95. I believe that the relevant principles are set out in the decision of the Upper Tribunal in *Noor* which contains a detailed examination of

both *Oxfam* and *Hok*. The Upper Tribunal's conclusion is set out in paragraph 87 of the decision as follows:

> In our view, the FTT does not have jurisdiction to give effect to any legitimate expectation which Mr Noor may be able to establish in relation to any credit for input tax. We are of the view that Mr Mantle is correct in his submission that the right of appeal given by s 83(1)(c) is an appeal in respect of a person's right to credit for input tax under the VAT legislation. Within the rubric 'VAT legislation' it may be right to include any provision which, directly or indirectly, has an impact on the amount of credit due but we do not need to decide the point. Thus, if HMRC have power (whether as part of their care and management powers or some other statutory power) to enter into an agreement with a taxpayer and that agreement, according to its terms, results in an entitlement to a different amount of credit for input tax than would have resulted in the absence of the agreement, the amount ascertained in accordance with the agreement may be one arising 'under the VAT legislation' as we are using that phrase. In contrast, a person may claim a right based on legitimate expectation which goes behind his entitlement ascertained in accordance with the VAT legislation (in that sense); in such a case, the legitimate expectation is a matter for remedy by judicial review in the Administrative Court; the FTT has no jurisdiction to determine the disputed issue in the context of an appeal under s 83.

96. That paragraph demonstrates that the Upper Tribunal took the following approach:

> (1) Its task was to construe the statutory provision dealing with the taxpayer's right of appeal which, in that case, was s83(1)(c) of the Value Added Tax Act 1994.
>
> (2) Having considered the intention of Parliament and having, at [77] and elsewhere of the decision, considered the statutory regime establishing the Tribunal and the fact that the Tribunal has no judicial review function, it reached the conclusion that Parliament only intended the Tribunal, on an appeal under s83(1)(c), to consider a person's right to credit under the VAT legislation.
>
> (3) If HMRC entered into an intra vires contract with a taxpayer setting out the amount of input tax credit that is due, the terms of that contract may be within the Tribunal's jurisdiction. The reason is that, by entering into the contract, HMRC would be exercising its statutory powers in accordance with VAT legislation with the result that the terms of that contract may involve a person's right to credit under VAT legislation. However, the Upper Tribunal made no conclusive decision on this point.

97. Having considered the statutory provisions dealing with the rights of appeal, I have concluded that the Tribunal has no jurisdiction to consider the arguments that Mr Hackett is advancing as to estoppel and legitimate expectation. There is no material difference between the right of appeal set out in s31 of TMA 1970 (or paragraph 34(3) of Schedule 18) and that set out in s83(1)(c) of the Value Added Tax Act 1994. All the statutory provisions confer a right of appeal against specified HMRC

decisions and none makes any reference to matters other than the statutory provisions dealing with the taxes concerned. If Parliament did not intend s83(1)(c) to give the Tribunal jurisdiction to consider matters other than a person's right to credit under VAT legislation, I see no reason why Parliament could have intended it to consider, on an appeal under s31 of TMA 1970 or paragraph 34(3) of Schedule 18, questions of estoppel and legitimate expectation which go beyond the relevant statutory provisions. If anything, the provisions of s50(6) and s50(7) of TMA 1970 make this even clearer in the context of this appeal than it was in the VAT appeal being considered in Noor, as those sections emphasise that the Tribunal's focus should be on the amount of the assessments being made and leave no room for a consideration of whether considerations of legitimate expectation or estoppel prevent HMRC from making the assessments.

98. In his oral submissions, Mr Hackett submitted that the Tribunal had a general power to supervise HMRC's discretions, including the decision on whether or not to issue an assessment. He relied, in this respect on the following passage from *Noor*.

> The FTT has no general supervisory jurisdiction over the decisions of HMRC. That does not mean that under s 83(1)(c) the FTT cannot examine the exercise of a discretion, given to HMRC under primary or subordinate VAT legislation relating to the entitlement to input tax credit, and adjudicate on whether the discretion had been exercised reasonably (see e.g. *Best Buys Supplies Ltd v Customs and Excise Comrs* [2011] UKUT 497 (TCC) at [48]–[53], [2012] STC 885 at [48]–[53]—a discretion under reg 29(2) of the VAT Regulations). Although that jurisdiction can be described as supervisory, it relates to the exercise of a discretion which the legislation clearly confers on HMRC. That is to be contrasted with the case of an *ultra vires* contract or a claim based on legitimate expectation where HMRC are acting altogether outside their powers.

99. I do not agree with Mr Hackett's interpretation of this passage. As I understand it, the passage is simply stating that, in certain contexts, HMRC are given a statutory discretion on a particular matter. For example, under Regulation 29(2) of the Value Added Tax Regulations, they have a discretion to accept evidence that input tax has been incurred in a form other than a VAT invoice. If HMRC refuse to exercise their statutory discretion in a particular case, a taxpayer can appeal (under s83(1)(c) of the Value Added Tax Act 1994 since that matter relates to input tax recovery) in which case the Tribunal must determine whether HMRC exercised their discretion correctly. That is very different from saying that the Tribunal has a general jurisdiction to police HMRC's discretion as to whether or not to issue an assessment. Moreover, Mr Hackett's argument is also at odds with the statement of Nicholls LJ in *Aspin v Estill* [1987] STC 723 where he said:

> The taxpayer is saying that an assessment ought not to have been made. But in saying that, he is not, under this head of complaint, saying that in this case there do not exist in relation to him all the facts which are prescribed by the legislation as facts which give rise to a liability to tax. What he is saying is that, because of some further

facts, it would be oppressive to enforce that liability. In my view that is a matter in respect of which, if the facts are as alleged by the taxpayer, the remedy provided is by way of judicial review.

100.Nor do I agree with the general distinction that Mr Hackett sought to draw between "public law" and "private law" arguments. I accept, following *Noor*, that if the appellants were arguing that HMRC had entered into an *intra vires* contract not to assess the appellants (or to assess them only for a particular sum), the Tribunal may have jurisdiction to consider whether HMRC's assessments complied with the terms of that contract. However, that does not mean that every argument that can be labelled a "private law" argument is within the scope of the Tribunal's jurisdiction.

101.Mr Hackett's argument relating to "abuse of process" is somewhat different. In the course of his oral submissions he clarified that he was not asking the Tribunal, in determining the appellants' appeals under s31 TMA 1970 or paragraph 34(3) of Schedule 18, to discharge the assessments on the grounds of excessive delay in making them. Rather, he was asking the Tribunal to exercise its case management powers to make appropriate directions (which may include barring HMRC from resisting the appeal) on the grounds that HMRC's delay in making the assessments means that the Tribunal will not be able to deal with the appeal fairly and justly. I agree with Mr Hackett that the decision of the Upper Tribunal in Foulser v HMRC [2013] UKUT 38 means that I have jurisdiction to consider whether it is possible to deal with this appeal fairly and justly and, if I cannot, to make appropriate directions.

Analysis of particular aspects of the procedural argument

Legitimate expectation and estoppel

102.I have concluded that I have no jurisdiction to consider these aspects of the procedural argument. Even if I had jurisdiction, I would not have accepted Mr Hackett's submissions.

103.Central to Mr Hackett's argument on "legitimate expectation" was his submission that, given the prolonged period during which HMRC took no substantive step to pursue its demands for tax, the Appellants formed the view that the challenge to the EBT was over. This submission is simply not borne out by the evidence. All three appellants agreed with HMRC that enquiries would be put in abeyance while a lead case relating to the efficacy of the retrospective amendments in their Deeds of Amendment and Rectification was pursued. While those enquiries were in abeyance, they all received letters reminding them that the dispute remained on foot and that interest on the amount HMRC considered to be due was continuing to accumulate. Having received those letters, none of the three appellants could have had any expectation, legitimate or otherwise, that their dispute with HMRC was over. Moreover, JCM and Praze acknowledged the existence of the dispute, and its potential consequences, in their accounts.

104.In order to succeed with any argument based on estoppel, Mr Hackett would need to show (in addition to a number of other matters) that the appellants had progressed their business affairs on the basis that that HMRC considered the matter closed. The chain of correspondence

between all three appellants and HMRC, and the notes to JCM's and Praze's accounts, show that this cannot have been the case.

Abuse of process

105.As I have noted, I consider that I do have jurisdiction to consider this argument. It amounts to an invitation that, if I consider HMRC's delay means this appeal cannot be dealt with fairly and justly, I should use my case management powers to make appropriate directions (which may include barring HMRC from defending the appeal). I will not, however, make any such directions.

106.The Tribunal has case management powers to regulate the conduct of litigation that is before it. Yet Mr Hackett is not making any complaint as to how HMRC have conducted the litigation from the point at which the appellants notified their appeals to the Tribunal. He is, therefore asking the Tribunal to punish HMRC for what the appellants consider to be unacceptable delay before Tribunal proceedings were commenced. I do not consider that would be a proper exercise of case management powers. The authorities that Mr Hackett showed me dealt primarily with delay after proceedings were commenced and, although Foulser was not focused on questions of delay, it dealt with a situation where HMRC were argued to have taken certain prejudicial actions while proceedings before the Tribunal were current.

107.In any event, I do not accept Mr Hackett's submissions that HMRC were guilty of inordinate delay before Tribunal proceedings commenced. Mr Hackett made no criticism of HMRC up until 2005. Between late 2005 and July 2007 the parties were engaged in discussions on the appellants' arguments as to the retrospectivity of the Deeds of Amendment and Rectification. This was quite a lengthy period of time, but the appellants were advancing a novel proposition and I certainly do not think this delay was even approaching unreasonable. Delays between July 2007 and 2011 or so arose as a result of all relevant parties agreeing that enquiries would be placed in abeyance pending the outcome of a "test case". The appellants can scarcely complain of delay occasioned by an arrangement which they initiated and agreed to. I do not know precisely when it became clear that the "test case" was not going ahead. I therefore do not know whether matters were progressed speedily after that point. However, by 2011 the vast majority of the delay had passed. HMRC took final steps to determine the tax liabilities of Alway and Praze in 2012. JCM had to wait until 2014 to receive a closure notice and it was not clear to me why that was the case. However, I was not satisfied that this period of delay justified the sanction of barring HMRC from defending the appeal.

108. None of the appellants pointed to any positive steps that they took to progress matters. Praze and JCM were within the corporation tax self-assessment regime and could have applied, under paragraph 33 of Schedule 18, for HMRC to end their enquiries and issue a closure notice within a specified period, but Mr Hackett accepted that they had not done so. From that I have drawn the inference that Praze and JCM were content with the ongoing delay, although they may subsequently have come to regret that decision.

> 109.In the circumstances, I see no reason to exercise case management powers to bar HMRC from defending the appeal.

47. In his skeleton argument Mr Fearn submitted that, to the extent that the decision in *Noor* decides that the First Tier Tribunal does not have the jurisdiction to exercise a judicial review function, it is wrong in law. He noted that the appellant in *Noor* did not appear at the hearing nor was represented before the Upper Tribunal, and submits that if he had been represented, a different decision would have been made. However, he did not pursue this argument at the hearing.

48. As regards the decision of the Tribunal in *Alway Sheet Metal*, Mr Fearn notes that the Tribunal acknowledged that it had case management powers to make appropriate directions to ensure that the Tribunal can deal with the appeal fairly and justly. He submits that this recognises the natural justice and public law submissions that he has made. He submits that the only reason the Tribunal did not exercise its powers to make such directions were because of the particular circumstances of the case before it.

49. Mr Fearn seeks to distinguish his appeal from the facts in *CM Utilities.* He submits that for estoppel to operate against HMRC, they must have been in full possession of all the facts. However, in *CM Utilities* there had been insufficient information available to HMRC when the original assessments had been made and this would disqualify the appellants in that case from relying upon estoppel. Whereas, in his appeal, HMRC were in full possession of all facts. Furthermore, Mr Fearn notes that the appellants did not appear and were not represented before the Upper Tribunal.

50. Mr Fearn also referred us to the report of the House of Lord's Economic Affairs Committee: *The Powers of HMRC: Treating Taxpayers Fairly*, and to HMRC's taxpayers' *Charter*.

51. Finally, Mr Fearn submits that HMRC are not acting proportionately. He uses this expression to refer to the significant costs and resources that have been expended by HMRC in recovering the modest remaining tax in dispute – namely £4714.97.

52. Mr Fearn made a number of submissions by email after the end of the hearing. The Tribunal wrote to Mr Fearn at the time stating that these could not be taken into account by the Tribunal in reaching its decision, and they have been ignored.

Discussion

53. It is unfortunate that HMRC made a number of errors when informing Mr Fearn of the amount of tax that he owed. We acknowledge that because of Mr Fearn's personal circumstances at the time, he was under considerable stress, and HMRC's errors can only have compounded the stress that he was under.

54. We have no doubt that Mr Fearn's liability to income tax and capital gains tax for 2003/4 was £94,261.52. This is shown in the calculations included in Mr Jackson's witness statements and the exhibits, and in the documentary evidence before us. Mr Fearn did not dispute these figures, and we find that this is the tax due. In addition, Mr Fearn needs to repay the refund of £5718.88 paid to him, and again, this amount was

not disputed. We find that the total amount payable (before taking account of any interest) is therefore £99,980.40.

55. We find that the final closure notice into Mr Fearn's self-assessment tax return for 2003/4 was the letter to him from HMRC dated 16 November 2011. The letter of 12 December cannot have been a closure notice, since the enquiry had already been closed by the letter of 16 November. This analysis follows from the drafting of s 28A(1B) TMA which provides that

> The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "final closure notice") —
>
> (a) in a case where no partial closure notice has been given, that the officer has completed his enquiries […]

56. The statute does not envisage that closure notices can be amended by the issue of a subsequent, "corrective" notice. That is not to say that there are no mechanisms available to correct the amount of tax stated in a closure notice if it subsequently is determined to be incorrect, just that this cannot be done by the issue of another closure notice. The adjustment mechanisms include the review process under s49B TMA, the settlement of an appeal by agreement under s54 TMA, or an appeal to this Tribunal and an adjustment to the amount of the assessment (or self-assessment) under s50 TMA.

57. It is, to say the least, unfortunate that the letter of 12 December described itself as a closure notice, when it was not, and could not have been, one. HMRC have apologised to Mr Fearn for this error. Quite what status this letter has does not matter, as will become apparent below.

58. The amount specified as due under the 16 November closure notice was £97,365.70, plus the repayment of the £5718.88 refund, totalling £103,084.58.

59. Under section 50 TMA, we are, in effect, required to determine the true amount of tax payable – irrespective of the amount shown in the self-assessment (as amended by the closure notice) and any subsequent correspondence. We then either increase or decrease the amount assessed accordingly.

60. We therefore determine that the amount of tax payable by Mr Fearn (before taking account of any interest) is £99,980.40.

61. The question we next have to consider is whether Mr Fearn is required to pay this amount. Or are HMRC bound by the erroneous figures as shown in HMRC's letter of 12 December 2011, the telephone call and subsequent letter of 2 February 2012, and the letter of 20 May 2015?

62. Mr Fearn submits that they are estopped from going back on those figures.

63. The letter of 12 December 2011 is of uncertain status. But, as we have found, whatever it is, it is not a closure notice. We also find that the content of that letter is not misleading. It takes account of additional reliefs to which Mr Fearn was apparently entitled, and reduces the tax payable from the amount previously shown on his self-

assessment, after taking account of the amendments made by the closure notice issued on 16 November. The difference in tax set out in the 12 December letter is a comparison with the self-assessment after the 16 November amendments. Critically, the actual amount stated as being now payable (£131,479.89) is correct and takes account of the previous erroneous refund. We do not consider that Mr Fearn can have any complaint about amounts set out in this letter being misleading in any way. We do however acknowledge that it was wrong for HMRC to have described this as being a "closure notice".

64. As regards the 20 May 2015 letter, the mistake in this letter was quickly noticed by HMRC and corrected by way of a telephone call on 26 May 2015 and a full explanation in the letter of 27 May 2015. If Mr Fearn was misdirected by this letter, it could only have been for a couple of days, and there is no evidence that he acted on this letter in any way to his detriment.

65. In relation to the letter of 2 February 2012, Mr Fearn's evidence was that he invested £100,000 in a Certificate of Tax Deposit on the basis of the amounts showed as owing in this letter, and that he would have invested a larger amount in the Certificate if he had been given the correct figure at that date. But Mr Fearn invested in the Certificate in October 2005, shortly after HMRC opened their enquiry. This was more than seven years before the letter he complains about. So, his investment in the Certificate could not have been influenced by the 2 February 2012 letter or, for that matter, the 12 December 2011 letter.

66. We find that Mr Fearn could not therefore have acted to his detriment as a result of the mistakes in these letters.

67. But even if he did, there is no jurisdiction in this Tribunal to provide a remedy for Mr Fearn.

68. Mr Fearn cited a considerable number of cases and academic texts in support of his case that HMRC are acting *ultra vires* and are estopped from pursuing him. It is unfortunate that Mr Fearn did not provide copies of some of the academic authorities that he cited, and did not take us through most of the others during the course of his submissions. We reserved our decision, and reviewed the cases and academic authorities subsequently. When we looked at the authorities ourselves, it became clear that these were often taken out of context.

69. We agree with Judge Richards in *Alway Sheet Metal* that the private law concept of estoppel does not apply to HMRC in this sort of case.

70. We acknowledge that there are administrative law concepts analogous to estoppel. But in English law, these administrative law rights are actionable by a claim for judicial review. Lord Scarman's speech in *Preston*, cited to us by Mr Fearn, makes this clear:

> […] *judicial review should in principle be available* where the conduct of the commissioners […] would have been equivalent, had they not

> been a public authority, to […] a breach of a representation giving rise to an estoppel.
>
> (our emphasis)

71. In substance Mr Fearn's case is that he was misdirected by HMRC as to the amount he owed, and that he invested in a Certificate of Tax Deposit for that amount. If he had been told the correct amount, he would have invested in a Certificate for a greater amount. But, as we have found, Mr Fearn did not invest in a Certificate in consequence of any of HMRC's mistaken letters. Even if he had, this is not a case of equitable estoppel, but of legitimate expectation. And any remedy for breach of legitimate expectation is by way of a claim for judicial review in the High Court, and not before this Tribunal.

72. Mr Fearn argued in his skeleton that this Tribunal has a jurisdiction in judicial review, although this was not pursued in the hearing. To avoid any doubt should this case go to appeal, we make it clear that we find that this Tribunal has no judicial review jurisdiction in this case. This Tribunal is a creature of statute, and we can only determine disputes where the relevant statute expressly so provides. No such provision has been made in the statutory provisions governing this appeal. There was an argument raised by the court in *Oxfam v HMRC* [2009] EWHC 3078 (Ch), that because of the particular way in which the VAT Act was drafted, this Tribunal had jurisdiction to provide a remedy similar to judicial review in various VAT matters. However, that argument was decisively struck down by the Upper Tribunal in *Noor,* which decided that this Tribunal had no such jurisdiction (with some limited exceptions relating to EU law that are not relevant here).

73. Mr Fearn places great reliance on the article by Mr Firth cited above. Mr Firth was described by Mr Fearn as a senior tax barrister and an expert on administrative and constitutional law and an authority on the subject – although, to be fair to Mr Firth who regularly appears before this Tribunal - I doubt that he would have described himself in such hyperbolic terms. Mr Fearn went on to say that Mr Firth's article is a "persuasive tour de force". Mr Firth argues in his article that *Noor* was wrongly decided by the Upper Tribunal. That is a matter of his opinion only, and as far as we are aware, it is not one that is widely shared. It certainly is not shared by us.

74. Mr Fearn submits that, for the reasons given in Mr Firth's article, both *Noor* and *Alway* are wrongly decided, and that his appeal enables those errors to be corrected. We disagree with Mr Fearn and consider that both cases were correctly decided. But our view does not matter. Irrespective of the merits of Mr Firth's article or our own views, unless and until *Noor* is overturned by a decision of the Court of Appeal or the Supreme Court, it remains binding on us. We find that we have no jurisdiction to give the remedy that Mr Fearn seeks. If he wishes to pursue this, he will either need to make an application for permission to file a late claim for judicial review before the High Court, or appeal this decision up to the level (at least) of the Court of Appeal (having first successfully applied for permission to appeal this decision to the Upper Tribunal).

75. We found Renata Petrylaite's article to be wholly irrelevant to the issues before us. As stated in the article's introduction, she analyses only the legal system of the

United States of America. Because there are substantial and significant differences between the law of the USA and the laws of the UK, the article is irrelevant to the issues in this appeal. Whilst we acknowledge that remedies analogous to estoppel are available under English administrative law (by way of judicial review in the High Court) these are not remedies that are available in this Tribunal.

76. Mr Fearn also referred us to Herling and Lyon's *Briefcase on Constitutional and Administrative Law* (2004) (which is also footnoted as a reference in Ms Petrylaite's article) regards estopping a government in England. As far as we can tell, it is an undergraduate casebook and revision guide (long out of print and out of date), and is not appropriate to be cited as academic authority before a court or tribunal.

77. Mr Fearn's submissions on *Alway Sheet Metal* and on *CM Utilities* miss the point.

78. The points he raises in relation to *Alway* and its references to the Tribunal's discretion to bar HMRC from any appeal apply to the Tribunal's case management powers – in other words the procedures the Tribunal adopts to ensure that the parties receive a fair hearing. These powers do not relate to the remedies available to the Tribunal in its determination of the merits of the underlying appeal.

79. As regards *CM Utilities*, Mr Fearn's submissions do not challenge in any way the Tribunal's decision in that case that it had the power both to increase, and decrease, the amount of tax assessed on, or self-assessed by, the appellant. Rather, Mr Fearn referred us to the references in that decision to the case management powers of the Tribunal. As with *Alway Sheet Metal*, Mr Fearn does not appreciate that these case management powers relate to Tribunal procedure, and not the remedies available to the Tribunal in relation to the disposition of the underlying appeal.

80. We have noted both the Report of the House of Lord's Economic Affairs Committee and HMRC's *Charter*, but neither take us any further. The *Charter* includes a statement to the effect that HMRC will provide a helpful, efficient, and effective service. HMRC have acknowledged their mistakes in dealing with Mr Fearn's tax affairs, and have apologised. But there is nothing written in the *Charter* that suggests that taxpayers should not be pursued for the tax that they owe.

81. The Economic Affairs Committee's report states in terms that

> Deliberate evasion and aggressive tax avoidance are clearly unfair on other taxpayers. We fully support HMRC's efforts to recover tax owed and deter such behaviours. (paragraph 25)

82. The acquisition and disposal of CRP bonds of the kind used by Mr Fearn was found by this Tribunal in *Abbeyland* as being

> … solely for the purposes of a tax avoidance scheme, all the steps of which were preordained, with no commercial motive or effect …

This is deliberate and aggressive tax avoidance exactly of the kind described by the Economic Affairs Committee. Mr Fearn cannot therefore pray in his aid the House of Lords report. And Mr Fearn must have known that he was entering into a tax avoidance

scheme, as he never bothered to seek to understand the underlying transactions, thus demonstrating that he had no commercial motive for entering into these transactions other than to avoid tax.

83. Finally, Mr Fearn's arguments in relation to proportionality misunderstand its application to this appeal. Rule 2(2)(a) of the Tribunal's procedure rules include a requirement that the Tribunal deals with cases in ways that are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties. So, in exercising its case management powers, the Tribunal must use its discretion in a manner that is proportionate to the case before it. But it is important to note that this provision primarily relates to the exercise by the Tribunal of its case management powers, and the Tribunal has little (if any) power to limit the resources a party is prepared to expend on the preparation of its own case.

84. The fact that the resources expended by HMRC in this appeal may exceed the tax at stake does not engage the proportionality principle as set out in the procedure rules. And there is no wider principle of proportionality that applies to this appeal. There is no suggestion that the Tribunal has not acted proportionately in the exercise of its case management powers. And whilst I can understand Mr Fearn's frustration that HMRC are pursuing him for the relatively small amount of tax that remains outstanding, he needs to step back, and consider this from a wider perspective. It cannot be right (or indeed fair) for HMRC to let a hypothetical taxpayer get away with not paying (say) £5000 of tax merely because the costs of recovery are greater than the amount of tax. If HMRC were to take this attitude, then there is the risk that some taxpayers would game the system and dispute their tax on specious grounds, knowing that they could get away without paying all the tax they owed. But, to avoid any doubt, we are in no way suggesting that this is the reason for Mr Fearn's appeal.

Ancillary matters

85. Mr Fearn has made an application for wasted costs under Rule 10(1) of the Tribunal's procedure rules. This rule can only apply to costs incurred after Mr Fearn has notified his appeal to the Tribunal, which was on 9 February 2012. The only matter that occurred after this date that might deserve some criticism is HMRC's letter of 20 May 2015 which repeated the mistake in the 2 February 2012 letter. But this error was quickly identified and corrected by HMRC by way of a telephone call on 26 May 2015 and a full explanation in the letter of 27 May 2015. Given that the error was quickly identified and corrected, we do not consider that it would be appropriate to make a wasted costs order. Mr Fearn's application is refused.

86. Mr Fearn also applies for an order under Rule 5(3)(d) of the Tribunal's procedure rules for an order that HMRC provide a breakdown of all costs incurred by HMRC (including internal man-hour (*sic*) costs and disbursements). Rule 5(3)(d) gives the Tribunal discretion to require a party to provide documents, information or submissions to the Tribunal or a party. We can see no good reason, as regards the management of this appeal, for making such an order, and the application is refused.

87. Finally, Mr Fearn applies for the Tribunal to order any further review or direction relating to the conduct of HMRC as it thinks fit. We consider and find that we have no such power, but even if we had, we consider that no such orders are appropriate. This application is also refused.

Outcome

88. We determine that the amount of tax payable by Mr Fearn (before taking account of any interest) is £99,980.40.

89. In addition, interest of £5208.56 is payable as set out in HMRC Solicitor's Office letter to Mr Fearn of 24 August 2017. The amount owing was therefore £105,188.96. After accounting for amounts paid of £100,473.99, the amount outstanding is £4714.97.

90. To the extent that interest arises in respect of the period after that considered in the 24 August 2017 letter, that will be payable in addition. We note that the calculation of interest is not within this Tribunal's jurisdiction.

91. 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.

NICHOLAS ALEKSANDER
TRIBUNAL JUDGE

RELEASE DATE: 17 FEBRUARY 2020

Cases referred to in skeletons but not mentioned in the decision:

Anisminic v Foreign Compensation Commission [1969] 2 AC 147
Fairmont Investments v Secretary of State for the Environment [1976] 2 All ER 865
O'Reilly v Mackman [1983] 2 AC 237
Wandsworth LBC v Winder [1985] AC 461
R v Home Secretary ex parte Pierson [1998] AC 539
R v Lord President of the Privy Council ex parte Page [1993] AC 682
Boddington v British Transport Police [1999] 2 AC 143
Drummond v HMRC [2009] EWCA Civ 608

Section 50(6) and (7) Taxes Management Act 1970

(6) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that, the appellant is overcharged by a self-assessment;

(b) that, any amounts contained in a partnership statement are excessive; or

(c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good

(7) If, on an appeal notified to the tribunal, the tribunal decides

(a) that the appellant is undercharged to tax by a self-assessment

(b) that any amounts contained in a partnership statement are insufficient; or

(c) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment or amounts shall be increased accordingly.