



TC07926

Appeal number: TC/2019/06660

INCOME TAX – procedure – application to strike out appeal – whether appeal against appealable decision – no – whether Tribunal has power to direct HMRC to issue appealable decision – no – whether Tribunal has jurisdiction – no – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PHILIP JINKS

Appellant

- and -

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

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal considered this appeal and made this decision in chambers on 13 September 2020 without an oral hearing under the provisions of Rule 29(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 having first read all the documents on the Tribunal file and the correspondence from both parties.

DECISION

Introduction

1. This decision is about an application made by each of the parties but principally about whether HMRC's application to strike out this appeal for want of jurisdiction should be allowed. I decided that HMRC's application should be allowed and the appeal struck out. A summary decision was issued to the parties on 7 October 2020. This is a full decision, as subsequently requested by the Appellant.

The Tribunal Rules

2. The relevant part of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 is Rule 8(2). This provides:

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

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

The Appellant's appeal to the Tribunal

3. The starting place for consideration of an application to strike out for want of jurisdiction, is the Notice of Appeal. In this case the Appellant filed a Notice of Appeal on 18 October 2019. In that appeal the Appellant requested that the Tribunal rule on "whether HMRC have acted at all times in accordance with the Tax Management Act and any other applicable rules or regulations" and whether he has a valid claim which would exceed or extinguish HMRC's claim.

4. Before his appeal was processed and categorised by the Tribunal, the Appellant emailed the Tribunal asking for a 14 day stay in light of a further response he had received from HMRC. The Appellant stated that he wished to produce an up to date Statement of Case (by which I understand him to mean that he wished to update his grounds of appeal).

5. On 28 November 2019, apparently not having seen the Appellant's request, the Tribunal categorised the Appellant's appeal and notified it to HMRC. HMRC were directed to file a Statement of Case no later than 27 January 2020.

6. Also, on 28 November 2019, but after the appeal had been notified to HMRC, the Appellant filed his Amended Grounds of Appeal. These were said to be copied to HMRC, but they were sent to HMRC's insolvency team and not to the team at HMRC which deals with Tribunal appeals. The Tribunal did not forward on a copy (until the summary decision was released) and it is unclear that they were ever seen before that by any of the litigation team at HMRC.

7. In his Amended Grounds of Appeal, the Appellant complained that HMRC had failed to respond to his claims, that they had failed to disclose, or had destroyed, evidence and that they had failed to protect his personal data. The Appellant also asked that his letter dated 2 November 2018 be treated as an overpayment relief claim under Section 42 of the Taxes Management Act 1970 (“TMA 1970”). At that time the Appellant did not provide a copy of his letter of 2 November 2018, nor of HMRC's replies apparently provided on 19 August 2019 and/or 1 November 2019. There were document references within the Appellant's Grounds, but no copy documents.

HMRC’s application to strike out this appeal

8. On 16 January 2020 (and thus ahead of the 27 January 2020 deadline for their Statement of Case) HMRC filed an application with the Tribunal seeking to have this appeal struck out on the basis that either the Tribunal did not have jurisdiction to hear certain matters or that there was no prospect of those matters succeeding.

9. The Appellant replied to the Tribunal on 17 January 2020, copying in the HMRC's solicitor's office team member, complaining that there was no response to his Amended Grounds of Appeal. (As I have noted above, these Amended Grounds were not sent to the team at HMRC dealing with this appeal, and so it seems likely that HMRC's solicitor's office had not seen those grounds.)

10. With his 17 January 2020 reply to the Tribunal, the Appellant provided a copy of HMRC's letter of 1 November 2019, in which HMRC set out their position that their earlier letter of 19 August 2019 was not an appealable decision. The Appellant asked the Tribunal to treat his email of 17 January 2020 as an application that HMRC's application of 16 January 2020 be struck out.

11. Next, on 27 January 2020, a Tribunal clerk informed both parties that HMRC's Statement of Case was still due. I do not consider that was correct, given the explicit nature of the application HMRC had made. As HMRC had formed the view that the Tribunal did not have jurisdiction, they were entitled to file an application for the appeal to be struck out. That application set out a detailed explanation of the background to this appeal and why HMRC had formed the view they did. HMRC’s application was received before the deadline for a Statement of Case and – given that HMRC's case was explicitly stated to be that there was no issue which the Tribunal could consider – I consider it was implicit that HMRC were seeking permission to file their application as an alternative to filing a Statement of Case. To have filed a Statement of Case at that time would have defeated the purpose of HMRC making an application to strike out the appeal.

The Appellant’s application for HMRC to be barred

12. On 29 January 2020, the Appellant emailed the Tribunal, not copying in HMRC's solicitor's office, asking that HMRC be barred from further participation in this appeal, and also asking that HMRC's application of 16 January 2020 be struck out

unless HMRC disclosed a list of all relevant documents in their possession within 28 days and provide a copy within 14 days of a request for that copy.

13. On 5 February 2020, HMRC (responding to the Appellant's 17 January 2020 email) sent a further email to the Tribunal apologising for not explicitly requesting a stay to the requirement that they serve a Statement of Case, and making such a request.

14. On 6 February 2020, the Appellant emailed the Tribunal, copying in HMRC's solicitor's office. In this email the Appellant stated that there was still no response to his Amended Grounds, that the District Judge hearing the insolvency dispute between the Appellant and HMRC had considered that there were two separate matters and that the Tribunal could consider HMRC's behaviour, and that one of the central issues was "a complex matter regarding time limits". The Appellant concluded by reiterating his application of 29 January 2020.

15. On 11 March 2020, the Tribunal wrote to both parties. That letter inaccurately described the Appellant's application of 29 January 2020 as an application to strike out the appeal, and asked HMRC to comment upon that. HMRC responded on 24 March 2020, objecting to the Appellant's 29 January 2020 application and asking that their application of 16 January 2020 be considered.

16. The Appellant responded to HMRC's email on 30 March 2020, noting that there was still no response to his Amended Statement of Grounds and still no Statement of Case. The Appellant reiterated his application of 29 January 2020.

17. On 6 April 2020, HMRC emailed the Appellant to notify him of a general stay of four weeks which was being applied to all appeals as a result of the pandemic. A second general stay, of ten weeks, was subsequently applied. After those two stays had expired, this appeal and the parties' applications were referred to me to consider.

My decisions

18. There are two applications to be decided: HMRC's application to strike out this appeal because there is no issue which the Tribunal has jurisdiction to decide, and the Appellant's application for HMRC to be barred because they did not file a Statement of Case. Although the Appellant also applied for HMRC's strike out application to be struck out, no reasons were given for why a properly made application (such as HMRC's strike out application) should not be considered by the Tribunal. I am not going to strike out HMRC's strike out application as the Appellant requested on 17 January 2020. The Appellant's application of 17 January 2020 is dismissed.

My decision on the Appellant's application

19. The first application I will decide on its merits is the Appellant's application of 29 January 2020. As I have explained above, I do not consider it was necessary for HMRC to file a Statement of Case when they had already filed an application for this appeal to be struck out, including a lengthy background to the history of events. HMRC's 16 January 2020 application made very clear HMRC's position with

regard to this appeal. I consider that the Tribunal's letter of 27 January 2020 was inaccurate.

20. I appreciate that the Appellant could not know that and I understand why, upon receipt of the Tribunal's letter of 27 January 2020, the Appellant might feel he was within his rights to apply for HMRC to be barred when no Statement of Case was filed. However, I hope he now understands why I do not consider that HMRC were in breach of Tribunal directions and why I am not going to grant his application.

21. For completeness I will add that even if I considered that HMRC were in breach of Tribunal directions, I do not consider the circumstances are such that a penal sanction such as barring would be an appropriate penalty. That is because HMRC had taken some action rather than simply ignoring Tribunal directions, their position was clear from their lengthy and comprehensive application to strike out the appeal, they acted quickly to make a retrospective application for relief, and because this was not part of a pattern of non-compliance which would merit a penal sanction.

22. Therefore, HMRC are not barred from taking part in this appeal. The Appellant's application of 29 January 2020 is dismissed.

23. Before I move on to HMRC's application, I note that the Appellant also asked that HMRC be directed to provide disclosure if they were not barred. If HMRC do not succeed in their strike out application, then the Tribunal will issue case management Directions which will provide for both parties to make disclosure, at the relevant time, of relevant documents.

My decision on HMRC's application to strike out this appeal

24. I now turn to consider HMRC's application that this appeal be struck out because there are no issues which are within the Tribunal's jurisdiction to determine.

25. I consider what the Appellant has asked the Tribunal to do. There are three parts. The Appellant's first argument is that HMRC have not retained, or have destroyed, relevant evidence. That is said to have occurred otherwise than during the course of these proceedings. The Tribunal only has the power to determine issues which Parliament has decided should be determined by this Tribunal, it does not have general oversight over HMRC's conduct or behaviour. That includes not having oversight of claims about the loss or destruction of evidence. Therefore, I do not consider that the Tribunal has jurisdiction to consider this aspect of the Appellant's appeal. These are matters to be taken up with HMRC as a complaint in the first instance, and then with the Revenue Adjudicator.

26. The second part of the Appellant's claim alleges HMRC has failed to protect his personal data. The Tribunal also does not have the power to consider whether there have been data protection breaches by HMRC. Any concerns which the Appellant has about data protection should be addressed to the Information Commissioner.

27. The only matter raised by the Appellant which could be within the remit of the Tribunal concerns the Appellant's letter to HMRC of 2 November 2018, HMRC's

response of 19 August 2019 and HMRC's further response of 1 November 2019. No copy of the 2 November 2018 letter has been provided. The Appellant argues that this is an overpayment relief claim, HMRC deny this is the case. I will assume, for the purposes of considering HMRC's strike out application only, that the Appellant is correct.

28. If either HMRC's letter of 19 August 2019 or HMRC's letter of 1 November 2019 was an appealable decision, then the Appellant could appeal to the Tribunal against that appealable decision. However, HMRC deny that either letter is an appealable decision. It seems that the Appellant agrees with that analysis because the basis on which he has brought this appeal is that HMRC have not issued an appealable decision in response to his 2 November 2018 claim. I have not seen a copy of the 19 August 2019 letter but I have seen the letter of 1 November 2019 and I agree with both parties that it is not an appealable decision.

29. Therefore, this appeal cannot be an appeal against an appealable decision.

30. The Appellant has asked that the Tribunal determine whether HMRC have failed to issue an appealable decision, on the basis that he made an overpayment relief claim in his letter of 2 November 2018, and that HMRC's letters of 19 August 2019 and 1 November 2019, sent in response, are not appealable decisions. However, for the Tribunal to consider that point would mean that the Tribunal was determining what is a hypothetical issue. That is because the Tribunal does not have a judicial review jurisdiction and so, whatever facts it might find, it does not have the power to direct HMRC to issue an appealable decision. The Tribunal does not determine hypothetical issues. If HMRC has failed to issue a decision which the Appellant considers should have been issued, then that is a matter which the Appellant should address to the Administrative Division of the High Court (if he is still in time to do so). The High Court will take into account all relevant matters, including the decision of the Court of Appeal (in *HMRC v Raftopoulou* [2018] EWCA Civ 818) that HMRC do not have to issue appealable decisions in response to out of time claims, and the High Court will make its own decision about whether an appealable decision has been issued, and/or should be issued.

31. The Appellant has stated that the dispute he wants to bring before the Tribunal concerns a complex point regarding time limits. That may well be the case, but that does not bring it within the jurisdiction of the Tribunal. As far as the Tribunal is concerned, there is no appealable decision for the Appellant to appeal against, and the Tribunal has no power to direct HMRC to issue an appealable decision.

32. Therefore, I agree with HMRC that the Notice of Appeal filed by the Appellant (as clarified or expanded by the Amended Grounds of Appeal) does not disclose any matter which the Tribunal can decide. As there is no matter over which the Tribunal has jurisdiction, following Rule 8(2)(a), I must strike out this appeal.

Conclusion

33. This appeal is STRUCK OUT.

Request for a full decision

34. A summary decision was issued to the parties on 7 October 2020. On 13 October 2020, the Appellant asked for full findings of fact and reasons for this decision.

35. This document contains the 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: 05 NOVEMBER 2020