



[2022] UKFTT 00136 (TC)

**TC 08467/V**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/01821**

**BETWEEN**

**MEGAN FAY WITTY**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE AMANDA BROWN QC**

**The hearing took place on 6 April 2022. I heard Mr Phillip Evans for the Appellant and Ms Laurie Outten, Litigator of HM Revenue and Customs' Solicitor's Office for the Respondents.**

**With the consent of the parties, the form of the hearing was by video using Tribunal video platform. A face to face hearing was not held for the convenience of the parties. The Tribunal had a pdf file prepare by the Respondents and the full Tribunal file including all correspondence from the Appellant.**

**Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.**

### **DECISION**

1. The Tribunal decided that the appeal should be struck out

#### **Summary findings of fact and reasons for the Decision**

2. The Appellant lodged a notice of appeal on 12 April 2020. The attachment to the Notice of Appeal was a statement of account and not a decision of the Respondents. The disputed tax was stated to be a sum of £15,206.28 said to be owed to the respondents together with an amount of £5640.80 said to be due to her.

3. By application dated 27 July 2020 HMRC sought to strike out the appeal pursuant to rule 8(1) FTT Rules on the basis that the Tribunal had no jurisdiction in relation to the asserted dispute.

4. Directions were made by the Tribunal on 13 November 2020 and 12 February 2021 requiring the Appellant to identify the decision of the Respondents against which her appeal was bought

5. Amended Grounds of Appeal and Further Information was provided on 11 March 2021 in which the decisions appealed were identified as “the decision not to accept and/respond to the amended 2010/11 and 2011/12 self-assessments” and “the decision to impose penalties on an improper basis in light of the amended self-assessments”. The grounds explained that the Appellant considered that tax (and associated penalties as appropriate) was due by reference to the amended self-assessments and not the amounts showing on the statement of account.

6. At the hearing Mr Evans stated that in her original self assessment returns his client had shown tax due for 2009/10 in the sum of £11,392.57 and for 2010/11 in the sum of £2890.88. It was said that on 10 October 2012 Mr Evans had delivered to Cardiff tax office amended returns for both years showing revised tax calculations in the sums of £4,222.97 due to HMRC for 2009/10 and a repayment from HMRC of £1,331.99 for 2010/11.

7. Mr Evans accepted that the amended return for 2009/10 was not made within the 12 months required by section 9ZA Taxes Management Act 1970 (TMA) but asserted that HMRC can and do accept out of time amendments. He contended that the claim that his client bought to the Tribunal was that HMRC continued to treat the original self assessed amounts as due from his client rather than the sums calculated in the amended returns. As per the grounds and amended grounds of appeal an amendment to the self assessment would result in an adjustment to the penalties and to interest.

8. As was explained to Mr Evans during the hearing, this Tribunal’s jurisdictional powers are prescribed by law. The Tribunal is not a forum for general challenge to the actions of HMRC but only to consider and apply the law in relation to a defined and prescribed category of decision taken by HMRC. In the context of income tax the power given to the Tribunal is contained in section 31 TMA and it is to review the conclusions in a closure notice issued under s9A or the basis or amount of an assessment in a closure notice or discovery assessment issued under s29 TMA. As confirmed by Judge Vos in *Volkwyn v HMRC* [2017] UKFTT 0771 (TC) there is no right of appeal in respect of errors in a self assessment – put simply there is no decision of HMRC to challenge as the error was made by the taxpayer themselves. Further, any challenge, if one were merited, against a refusal to accept an out of time amendment to a self assessment is not a matter which falls within the jurisdiction of the Tribunal. Were the stringent requirements for bringing a judicial review to be met (i.e. that the strict 3 month time limit and establishing, in essence, irrationality on the part of HMRC in refusing the out of time amendment) it would need to be made to the administrative court.

9. It was apparent that there was no specific challenge to the penalties in this case other than that they were calculated by reference to a tax amount which does not take account of the amended returns. In any event, and as contended by HMRC, the penalties in this matter have already been considered and upheld by the Tribunal in a judgment dated 18 June 2019. The decision of the Tribunal is final unless successfully appealed to the Upper Tribunal. Such an appeal requires the permission of the Tribunal, and if permission is refused, the Upper Tribunal on an application made within 56 days of the original judgment. Whilst an appeal may be bought out of time the appellant would need to show that a delay of what is now nearly 3 years had a very good reason and that it was, in all the circumstances, fair that any appeal be admitted. Where an appeal is more than 3 years late it will be extraordinarily difficult to be granted permission to appeal. Absent any application for permission, this Tribunal must treat the penalties as final and not open to challenge.

10. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and

either party will have 56 days in which to appeal. 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.

**AMANDA BROWN QC  
TRIBUNAL JUDGE**

**Release date: 20 APRIL 2022**