



Neutral Citation: [2022] UKFTT 00269 (TC)

Case Number: TC08561

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[By remote video hearing]

Appeal reference: TC/2020/02023

INCOME TAX - Closure Notice - procedural inaccuracies - Closure Notice amended in part - whether other appealable decisions?- no - remaining purported grounds of appeal struck out

Heard on: 8 August 2022

Judgment date: 11 August 2022

Before

TRIBUNAL JUDGE ANNE SCOTT

Between

OWEN PATRICK WILLIAMS

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Williams

For the Respondents: Barbara Belgrano, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. For the reasons set out below, although Mr Williams vigorously disagrees, the only appealable decision before the Tribunal is the Closure Notice issued to Mr Williams by the respondents (“HMRC”) on 17 April 2020.

2. With the consent of the parties the form of the hearing was video attended by Mr Williams, Ms Belgrano, and those instructing her from HMRC, using the Tribunal video hearing system. A face-to-face hearing was not held for the convenience of all the parties. The documents before the Tribunal were contained in a Bundle extending to 527 pages. In addition I had a document from Mr Williams entitled “HMCTS Summary of Claims”.

Decisions on the Closure Notice and reasons therefor

3. In his 2017/18 Self-Assessment Tax Return (“SATR”), Mr Williams had incorrectly omitted pension income he had received totalling £10,890.17 and tax deducted of £37.60 from The LCH Pension Scheme and the JPMC UK Retirement Plan. The Closure Notice corrected the SATR to incorporate this income thereby increasing the tax charged by £2,140.40 from £1,041.60 to £3,182.

4. That amendment was not challenged on appeal and the Tribunal upholds the Closure Notice to that extent.

5. In addition to bringing the omitted pension income into charge, the Closure Notice also purported to amend the claim that Mr Williams had made for early repayment in respect of an alleged 2018/19 loss which Mr Williams wished to set off against 2017/18 income.

6. Although HMRC still do not accept that this claim made by Mr Williams is well founded or that relief should be given predicated on that claim, HMRC have reviewed the position and accept that the quantum of the repayment claim made by Mr Williams was £200,918.

7. HMRC invited the Tribunal to allow the appeal against the Closure Notice to the extent that HMRC could not remove the claim for £200,918, which they had purported to have done, by way of an enquiry under section 9A of the Taxes Management Act 1970 (“TMA”) followed by the 2017/18 Closure Notice.

8. HMRC now accept that they ought to have opened an enquiry into the claim under Schedule 1A TMA or opened an enquiry into the 2018/19 tax return applying the principles set out in *HMRC v Cotter* [2013] UK SC 69 and *R (on the application of de Silva) v HMRC* [2017] UK SC 74. HMRC did not open such enquiries in time.

9. Accordingly the appeal is allowed to that extent, as for procedural reasons, the claim in the sum of £200,918 should not have been disallowed by the Closure Notice.

10. As a result, the conclusion in the Closure Notice should be varied to remove the phrase:
“We have removed this claim in its entirety”

and the amendments in the Closure Notice should be varied to read:-

“How your return has been amended.

I have included the omitted pension income you received from The LCH Pension Scheme and JPMC UK Retirement Plan.

Before this amendment your tax return showed tax due of: £1,041.60

After this amendment your tax return shows tax due of: £3,182

The difference between these amounts is: £2,140.40

The difference of £2,140.40 is the result of the amendment to your Self Assessment Tax Return made by this final closure notice.

A copy of our tax calculations is enclosed with this letter.”

The Procedural History

11. On 9 June 2020, Mr Williams appealed to the Tribunal pointing out that he was appealing direct to the Tribunal rather than accept an offer of a review. He enclosed a letter dated 14 May 2020 from HMRC indicating that HMRC intended to reject his appeal against the Closure Notice for 2017/18. That letter offered review rights. Technically that letter is not accurate but nothing turns on it since HMRC accept that there is a valid appeal in this matter.

12. On 29 June 2020, this appeal was categorised by the Tribunal as a complex case and on 14 July 2020 Mr Williams opted out of the costs regime.

13. On 30 March 2021, there was a Case Management hearing to determine HMRC’s application dated 18 August 2020 for Further and Better Particulars of Mr William’s Grounds of Appeal and to consider case management and jurisdiction matters generally.

14. Thereafter I issued a number of Directions. Those included Directions dated 31 May 2021 relating to HMRC’s further application for Further and Better Particulars in response to the appellant’s lodgement of his “Particularisation of Grounds of Appeal”.

15. I granted a stay of proceedings to enable negotiation of a possible settlement. On 29 October 2021, HMRC intimated to the Tribunal that a proposal had been sent to Mr Williams and a further stay of 14 days was sought and granted. On 16 November 2021, HMRC intimated that negotiations had not been successful and further correspondence ensued. Mr Williams, amongst other matters, requested that the Tribunal:-

(a) Award all costs since 2018 and all costs still to be incurred.

(b) Reinstate the payment of £200,918, being the repayment claim which he alleged had been deleted from his self-assessment account without explanation.

(c) Reject HMRC’s defence.

(d) Make findings of “A full four year ‘observation and lament’ of their [HMRC’s] cynical contempt for the UK Taxpayers Charter and total failure to address the significant EUCHR issues”.

16. Following the lodgement of further submissions, I issued further Directions on 14 December 2021 pointing out, again, that the only appealable decision before the Tribunal was the Closure Notice. The matter would be decided either on the papers or, if not so agreed by the parties, then a hearing would be listed.

17. I indicated that it had repeatedly been explained to Mr Williams that the Tribunal was created by statute and only had the powers given to it by statute, yet he had repeatedly sought far more extensive remedies. I attached again a copy of the full reasons (“the Reasons”) I had attached to earlier Directions explaining that the five “decisions” which Mr Williams stated were appealed in his response dated 21 June 2021, were not appealable decisions and the Tribunal had no jurisdiction in that regard.

18. In the interim, HMRC had indicated that they would no longer be arguing that they could remove the claim for £200,918 by way of the Closure Notice. I sought the consent of the parties to deal with that issue on the papers.

19. On 13 January 2022, Mr Williams lodged with the Tribunal a document entitled “DECISION ANALYSIS and PRE-ACTION and REMEDY” which he copied to the Chancellor’s Office and the HMRC Ministerial Correspondence team. That set out a number of pre-conditions before Mr Williams would consent to the matter being decided on the papers.
20. At my request the Tribunal administration responded to Mr Williams’ emails stating:
- (a) The only power that the Tribunal had at that juncture was to list the appeal for hearing and asking for dates to avoid for such a hearing, and
 - (b) “Mr Williams (sic) ‘REQUESTED TRIBUNAL REDIRECTION’ cannot be granted since the Tribunal has no jurisdiction to direct a review by HMRC and the Tribunal has already confirmed that it has no jurisdiction in regard to the Taxpayers Charter.”
21. On 9 February 2022, Mr Williams lodged with the Tribunal and HMRC what he described as “CONSENT TO SETTLEMENT IN PAPERS and DRAFT SETTLEMENT” which was also widely copied as previously.
22. That stated that he intended, in due course, to consent to settlement “by papers” but “in the interim” he asked the Tribunal to review the draft settlement offer.
23. HMRC then sought time to take instructions and discuss matters with Mr Williams and that was granted.
24. In terms of Directions issued on 12 May 2022, I formally intimated that HMRC had withdrawn their defence of the appeal against the Closure Notice on the basis set out in paragraphs 7 and 8 above. I pointed out that in the event that HMRC did not apply for reinstatement of that part of their case by 20 May 2022, the appellant’s appeal succeeded. They did not so apply.
25. I again pointed out that that appeared to be the only issue that had been appealed in respect of which the Tribunal had jurisdiction but that Mr Williams had consistently failed to recognise the limitations of the Tribunal’s jurisdiction.
26. Mr Williams is, and always has been, a party litigant. I pointed out in those Directions that Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (as amended) (“the Rules”) provides that the Tribunal must strike out proceedings if it does not have jurisdiction. In the circumstances, however, in fairness to Mr Williams, I fixed a hearing to allow him a final opportunity to advance any argument that there remains an appealable decision. I annexed a further copy of the Reasons.
27. Mr Williams did not comply with the Directions that by no later than Friday 20 May 2022, he should provide dates to avoid for a hearing. The hearing was duly fixed for 8 August 2022.
28. At 16:19 on 5 August 2022, Mr Williams lodged what he described as a “Summary of Claims” for the hearing. He requested that the Tribunal:-
- “1. direct HMRC to settle the Oct 2021 Tribunal Award.
 - 2. to repudiate the 2018 decision to apply Disguise Remuneration without appropriate appeal or compliance with CHR.
 - 3. To repudiate the 2018 decision to apply Loan Charges without appropriate appeal or compliance with the UK TC.
 - 4. To confirm and state that HMRC have failed to comply with the UK TC as they have not identified a ‘single officer’ who can cover both the corporate issues in the loan

charges and the personal tax issues raised in their rejection of offer. HMRC have now provided 15 officers, none of whom are identified as meeting this specification.

If Tribunal directs repudiation of the 2018 decisions, they should direct HMRC to report this fact to the Chancellor's office and put an end to this disgraceful case of –

5 years of 'STATE BULLYING' of a high taxpayer and job creator (<300)."

The correspondence between the parties

29. In the Bundle there was relevant correspondence between the parties which sheds some light on how this matter came to the Tribunal.

30. Although it post-dates some of the other relevant correspondence, a letter from Mr Williams to Mr Nick Goodwin of HMRC dated 17 April 2019 sets the scene rather well. He confirmed that he had entered the JPM EBT scheme in 2000. He stated that he was seeking an appeal with HMRC in two parts, the second of which would follow.

31. Under the heading "2017/18 Tax return" he stated: "In 2017-18, in anticipation of the changing Rules ... I have made appropriate entries in my tax return."

32. On 14 January 2019 he had written to HMRC stressing the urgency of "resolving" the issues prior to the "pending April Deadline". That April deadline was the well-publicised, by HMRC, deadline of 5 April 2019 in relation to the loan charge. The background is that the loan charge would affect individuals if they had used disguised remuneration schemes, which HMRC viewed as tax avoidance, and they did not either repay their loans before 5 April 2019, or settle their case with HMRC under the November 2017 Disguised Remuneration Settlement Terms ("the 2017 Terms").

33. Mr Williams enclosed a calculation relating to loans of £384,422.37 showing tax and National Insurance Contributions ("NICs") due of £200,981.99. He apparently asked for assistance from HMRC because on 21 January 2019, HMRC responded and apologised stating that they could not provide tax advice as it was self-assessed tax.

34. At that juncture Mr Williams was clearly very anxious to achieve some sort of negotiated settlement in order to avoid the loan charge. He had put his house on the market in order to raise funds.

35. On 20 February 2019, HMRC wrote to him stating that if he was seeking to settle the tax and NICs on his EBT sub-fund allocated amounts, then it might be possible to do so prior to the loan charge taking effect.

36. On 24 April 2019, HMRC wrote to him requesting details of the underlying facts. Mr Williams responded with the letter to which I refer in paragraph 30 above dated 17 April 2019 saying he was appealing.

37. On 22 May 2019, Officer Siu responded stating that he could not see any decision that could be appealed. He asked for clarification of a number of matters. In particular he pointed out that if it was still Mr Williams' intention to settle with HMRC he required the information sought in his letter of 24 April 2019. He also made it clear that if Mr Williams did not wish to settle then "...the loan charge will apply to all of your EBT outstanding loan amounts on 5 April 2019".

38. Mr Williams' response on 18 June 2019 was to say that "...this is not a standard case of 'disguised income'" and that he did "...not agree that this necessarily constitutes 'disguised income'" and he would reserve "any possible options to settle".

39. Mr Williams had instructed Ernst & Young to prepare a settlement agreement with HMRC in terms of the 2017 Terms. They lodged that with HMRC on 3 July 2019.

40. On 8 July 2019, HMRC wrote to Mr Williams stating that they would wish to "...clarify any issues you have about the proposed settlement opportunity".

41. On 17 July 2019, Mr Williams wrote to HMRC enclosing a caveated version of that agreement. On 22 July 2019, he wrote to HMRC saying that the document would be signed that day. HMRC wrote to Ernst & Young on the same morning stating that the proposed settlement was not in line with the published 2017 Terms and was unacceptable to HMRC. The choice for Mr Williams was to sign the un-caveated version submitted by Ernst & Young by 3pm that day. Mr Williams delivered the signed caveated version before 3pm, acknowledging that it would not be acceptable and informing HMRC that they should "...review the case and suggest a way forward."

42. It would seem that some settlement offer was received by HMRC on 25 July 2019 but I have not seen it. Correspondence ensued.

43. On 22 August 2019, Officer Siu wrote to Mr Williams stating clearly:-

"HMRC has made no conclusions in respect of personal tax position (sic) or your loans and has already published the basis of the settlement terms along with other publications surrounding the loan charge".

He pointed out that the onus was on Mr Williams to demonstrate and produce such evidence as is required that the loan charge did not apply to him.

44. He pointed out that the settlement offer received on 25 July 2019 was out of time for HMRC to consider under the 2017 Terms. He went on to outline very clearly what steps Mr Williams would require to take in order to seek some resolution of his EBT contributions and loans in order that it might be open to him to agree a settlement with HMRC going forward. Those steps included advising:

(a) J P Morgan of the details of the outstanding loans as at 23:59 on 5 April 2019 to enable them to make the correct reports and pay the PAYE tax and NIC to HMRC in respect of the loan charge;

(b) Complete an Additional Information Report and send it to HMRC before 1 October 2019. The Report requests information about the loans he had received and other information as described in the legislation;

(c) Complete and make an ITSA Return [in other words SATR] by 31 January 2020 to include the loan charge amounts.

45. I do not know whether or not Mr Williams contacted J P Morgan. Ms Belgrano helpfully pointed out that the 2018/19 P14 provided by J P Morgan had an entry which read: "D R Loan Amount" and the sum involved was £379,331.77. HMRC's Real Time Information ("RTI") shows the same figure under the heading "D R Loan Amount".

46. In passing I make it clear that that is not a matter for this Tribunal but Ms Belgrano indicated as a point of information that HMRC would wish to enter into discussions with Mr Williams in order to clarify:

(a) what tax had been paid on loans,

(b) when, and by whom, and

(c) whether that DR Loan Amount relates to the disputed repayment claim which, of course, is in a very different sum.

47. Certainly no Additional Information Report nor an entry about loan charges in the 2018/19 SATR were submitted to HMRC.

Discussion

48. Much of the lengthy explanation in the Reasons is not relevant to this hearing but what is relevant is the clear explanation that:-

“Mr Williams laboured under the misapprehension, which is understandable given the terminology in the Charter, that any decision of HMRC can be taken to the Tribunal (‘the FTT’). That is not the case, so at the outset of the hearing, I explained that the FTT is a creation of statute¹ and therefore has only the powers given to it by law. The FTT has no judicial review function and can only deal with appealable decisions, ie decisions that carry a statutory right of appeal.”

49. At the outset of this hearing I explained, again, to Mr Williams that the only appealable decision in the Bundle was the Closure Notice. As I have pointed out he disagreed. He argued that the whole logic of this appeal was about the loan charge. It was not about the Closure Notice.

50. Firstly, his Notice of Appeal had attached to it the decision which he said that he was appealing and that was an appeal of the Closure Notice. Undoubtedly, however, his Grounds of Appeal did talk about loan charges.

51. I endeavoured to explore with him what he considered to be his Grounds of Appeal for this hearing as set out in the Summary of Claims.

52. The first issue was that the Tribunal had made no “award” let alone any in October 2021. Until now the Tribunal has made no decisions. Mr Williams explained that what he meant was that he wished the Tribunal to tell HMRC that if they inhibited the repayment claim once a decision allowing that part of the appeal was issued, then they could not do so.

53. I had already intimated to Mr Williams at paragraph 10 of the Directions issued by me on 14 December 2021, that:-

“I note from paragraph 9 of HMRC’s Submissions that although HMRC will credit Mr Williams’ account once they have a decision, it is their intention to use an ‘inhibit’ to prevent that amount being paid. That is not a matter for the Tribunal and, of course, has not yet happened, but I thought that I should explain to Mr Williams that HMRC do have the power to inhibit a taxpayer’s account – meaning that the money would not be paid out – but any decision to do so is not an appealable matter. Such a decision can only be challenged by judicial review. There are strict time limits for judicial review”.

54. That remains the position.

55. Accordingly, his first request in the Summary of Claims cannot be allowed. Quite apart from anything else, the Tribunal has no jurisdiction in regard to something that has not yet happened. Therefore Claim 1 in the Summary of Claims falls to be struck out in terms of Rule 8(2)(a) of the Rules and I so DIRECT.

56. His remaining Claims fall to be considered together. He explained that his reference to CHR is to the European Charter on Human Rights and the reference to UK TC is to the Tax Charter in the UK.

57. In the Reasons, I had pointed out:-

“Furthermore, to the extent that the appellant criticised HMRC’s conduct over the years prior to this appeal, and he did, the FTT has no jurisdiction; that is a matter for the complaints process within HMRC”.

¹ TCEA 2007

58. I have repeatedly reiterated that orally and in writing. Accordingly Claim 4 does not fall within the jurisdiction of the Tribunal and falls to be struck out in terms of Rule 8(2)(a) of the Rules and I so DIRECT.

59. Although Mr Williams has repeatedly said that HMRC have bullied the Tribunal and made other allegations about HMRC's conduct, Ms Belgrano's and Ms Gore's (the HMRC litigator) conduct of this appeal has been fully compliant with the Overriding Objective.

60. I certainly have not been bullied. As far as HMRC are concerned, Mr Williams accused me of "letting them off the hook". I have explained to Mr Williams repeatedly that the Tribunal has no discretion and must simply find the facts and apply the relevant law. I have also explained that in terms of Rule 8(2)(a) of the Rules the Tribunal must strike out any part of the proceedings in respect of which it does not have jurisdiction; hence my focus on appealable decisions.

61. I cannot consider decisions in respect of which no right of appeal lies to the Tribunal. HMRC have consented to the considerable latitude that I have extended to Mr Williams to enable him to attempt to identify appealable decisions.

62. Mr Williams is absolutely adamant that HMRC had made decisions on both loan charges and disguised remuneration and that those were to be found in the Bundle. That quite simply is not the case.

63. I have set out the correspondence in some detail because the basic point is that at no stage did HMRC apply the loan charge. They made no decisions relating to the loan charge or disguised remuneration.

64. The simple fact is that Mr Williams was aware that the loan charge would be coming into force and effect. He approached HMRC and indicated that he wished to settle, albeit on his own terms, and he sold his house in July 2019. He alleges that ultimately colleagues who had paid the loan charge had it refunded and that was unfair. Since he had not paid anything he had received nothing but had suffered financial loss.

65. He blames HMRC for the sale of his house which he alleges was forced by them. In summary he felt that he had had to sell the house in order to "...settle and write off the outstanding loans". Having done that, the decision by Government to implement 19 of the 20 recommendations by Sir Amyas Morse in his independent review published in December 2019, including the removal of loans made before 9 December 2010 from the loan charge, meant that he would not have needed to have sold his house, as his loans fell into that category. That change became law in July 2020.

66. This at least is straightforward. He told HMRC that he was selling his house (in the context of the settlement negotiations) but that was a choice he made and HMRC had no involvement. Neither he nor HMRC could have predicted the subsequent change in the law.

67. I have previously explained to Mr Williams that the decision of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUTT 363 (TCC) makes it very clear that this Tribunal has no power to consider whether the law is fair or not.

68. It transpired in the course of this hearing that Mr Williams' view is that the fact that there were settlement negotiations meant that he felt pressurised to proceed to make arrangements which proved to be inimical to his interests (such as selling his house) with a view to arriving at a settlement and repaying loans. It was that that had caused him so many problems.

69. In essence he argues that the decisions in 2018 to which he refers in the Summary of Claims, are what he describes as being "subtle". What he describes as decisions were simply HMRC engaging with the settlement proposals which came from him in light of the expected

loan charge which would be due. Mr Williams made that explicit when he said that there must have been decisions because he could see no other reason why Officer Siu engaged in correspondence with him.

70. That is not an appealable decision. As indicated in paragraphs 42 and 43 above Officer Siu made it clear that HMRC had reached no conclusions about Mr Williams and the loan charge or disguised remuneration and indeed required a great deal more information from him before matters could be progressed.

71. I have no hesitation in finding that:-

(a) The only enquiry opened by HMRC was in respect of 2017/18.

(b) The Closure Notice in respect of that is the only appealable decision for that year.

(c) HMRC have raised no assessments and opened no enquiries in respect of any other years.

(d) There are no decisions by HMRC in 2018 that are capable of appeal to the Tribunal.

72. Accordingly the Tribunal cannot accede to Claims 2 and 3 in the Summary of Claims and those must be struck out in terms of Rule 8(2)(a) of the Rules. I so DIRECT.

73. Lastly, in terms of the Summary of Claims, for the reasons given, obviously I am not repudiating the alleged 2018 decisions but in any event this Tribunal has no power to direct HMRC to report anything to the Chancellor's Office.

74. For completeness, I address Mr Williams' argument that the whole problem is that HMRC should have accepted his offer(s) of settlement and in refusing to do so he was denied the right to appeal. I have previously addressed that in the Reasons but he raised it again in the course of this hearing. I reiterate what I said then in paragraph 5:-

“...HMRC's decision not to enter into a negotiated settlement with the appellant is certainly not a decision that can be challenged in the FTT and even more pertinently the FTT cannot force HMRC to use its care and management powers and enter into a settlement. If they do not wish to settle, they need not.”

Disposition

75. The Tribunal allows the appeal in respect of the Closure Notice in relation to the removal of the claim for £200,918 but dismisses the appeal in all other regards.

76. The Claims in the Summary of Claims are struck out.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

77. 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.

**ANNE SCOTT
TRIBUNAL JUDGE**

Release date: 11 August 2022