



TC03121

Appeal number: TC/2013/00694

INCOME TAX- application to appeal out of time 1997/8 and 1998/9 amended assessments- appellant went to Spain in 2000 before notified of enquiries- advised in 2008 when still in Spain that tax affairs settled- applied for repayment 2012 on return to United Kingdom- repayment refused because of outstanding 1997/8 and 1998/9 liabilities.- appellant had a reasonable excuse for delay – right to appeal out of time allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CATHERINE LESLIE DAVISON

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE DAVID S PORTER
ALAN P SPIER**

Sitting in public at Phoenix House, Bradford on 13 November 2013

Mr Michael Davison, husband of the Appellant, appeared on her behalf

Mr Anthony Burke, an Inspector of Taxes, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. Mr Michael Davison (Mr Davison), the husband of the Appellant, Mrs Catherine Leslie Davison (Mrs Davison) appealed on 12 January 2013 for Mrs Davison to be allowed to appeal out of time against the Revenue's (HMRC) assessments for the years 1997/8 and 1998/9 amounting to £450.80 and £2618.03 respectively, arising from Mrs Davison's self-assessment returns filed with HMRC. Mrs Davison was aware that HMRC had raised an enquiry into her tax return for the year 1996/97 but she had been told that there was no tax liability arising. HMRC say that Mrs Davison has had more than sufficient time to make an appeal and had failed to do so in time.

2. Mr Anthony Burke (Mr Burke) an Inspector of Taxes, appeared on behalf of HMRC and produced two bundles of documents for the Tribunal. Mr Davison appeared on behalf of Mrs Davison, who gave evidence.

3. We were referred to the following cases:

- *Former North Wiltshire District Council v The Commissioners for her Majesty's Revenue and Customs* TC00714.
- *Bi-Flex Caribbean Ltd v The Board of Inland Revenue* 63 TC 515.

The Law

4. Section 49 The Taxes Management Act 1970 (The Act)
Late notice of appeal.

- (1) This section applies in a case where-
 - (a) notice of appeal may be given to HMRC, but
 - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if-
 - (a) HMRC agree, or
 - (b) Where HMRC do not agree, the tribunal gives permission.
- (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.
- (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.
- (5) Condition B is that HMRC are satisfied that there was a reasonable excuse for not giving the notice before the relevant time limit.
- (6) Condition C is that HMRC are satisfied that the request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.
- (7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit

(8) In this section “relevant time limit”, in relation to a notice of appeal, means the time before which the notice is to be given (but for this section)

Section 50 Procedure

- 5 (6) If, on appeal notified to the Tribunal, the Tribunal decides –
(a) that,.. the appellant is overcharged by a self-assessment
(b)
(c)....

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

Rule 1.1 of the Civil Procedure Rules (“CPS) factors

- 15 (a) The interests of the administration of justice;
(b) Whether the application for relief has been made promptly .
(c) Whether the failure to comply was intentional.
(d) Whether there is a good explanation for the failure.
(e) Whether the failure was caused by the party or his legal representatives
(f) The effect which the failure to comply had on each party; and
20 (g) The effect which the granting of relief would have on each party

Section 118 (2) Taxes Management Act 1970 provides:

25 “For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a time limit if her did it within such further time, if any, as the Board or the Tribunal or officer concerned may have allowed: and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it if he did it without unreasonable delay after such excuse had ceased.

The Facts

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5. HMRC amended the returns for 1996/7,1997/8 and 1998/9 as follows:

Year	Date Filed	Due Filing Date	Last date to raise enquiry	Enquiry Opened	Tax due
35 1996/7	30.1.1998	31.1.1998	30. 4. 1999	12.1.1999	Nil
1997/8	30.1.1999	31.1.1999	31.1.2000	20.3.2000	£450.80
1998/9	30.4.1999	31.1.2000	31.1.2001	20.3.2000	£2,618.03
				Total	£3,068.83

40 At the time of the , HMRC had 12 months after the due filing date to open an enquiry into a self-assessment return. If a Return was late this was extended to 12 month plus the quarter following its submissions. All enquiries were opened within the time limits under section 9A (2) (b) Taxes Management Act 1970 (the Act).

45 The amendments were made under section 28A (1 & 2) of the Act on the 4th May 2000 and all three enquiries were closed on 17 May 2000.

6. Mr Davison told us that his wife left her United Kingdom hairdressing business in March 2000 before they were aware that enquiries had been entered into for the years 1997/ 8 and 1998/9. They went to live in Spain. As evidence that
5 HMRC knew of that move, we were referred to a telephone conversation on 24 January 2001 with HMRC to Mrs Davison's accountant, when he advised HMRC that he was no longer instructed and that Mrs Davison was now living in Spain. If HMRC had checked with the Spanish authorities (which they eventually did) at that time, they would have been able to contact Mrs Davison.

10 7. In spite of the telephone call from the accountant, HMRC appears to have spent the next three years attempting to contact Mrs Davison in the United Kingdom. In the interim period, HMRC raised two further assessments for the years 2000/1 and 2001/2 when Mrs Davison was in Spain. She had, in fact, registered as a taxpayer
15 with the Spanish Authorities in November 2000 when she commenced working there as evidenced by the Spanish registration details from Benidorm dated 3 November 2000 which were produced to the Tribunal.

20 8. Subsequently, HMRC was able not only to trace Mrs Davison to Spain, but was able to withdraw the money from her Spanish bank account it said was due for the years 2000/1 and 2001/2 amounting to 1,581.19 euros. It is unclear how HMRC was able to withdraw the monies from her Spanish account without her knowledge. When Mrs Davison checked her bank account she discovered the withdrawal. It was only at this point that Mrs Davison became aware that there was a difficulty with her
25 2000/1 and 2001/2 tax affairs.

30 9. Mrs Davison told us that she telephoned HMRC on 8 July 2008 and received confirmation that the tax due on the assessments for the two years had been incorrectly raised and that the tax was not due. Mrs Davison replied that if that was the case she wanted the 1,581.19 euros returned. HMRC said that it could not agree to that as it noted tax of £3,068.83 (see figures above) was due on the earlier assessments for the years 1997/8 and 1998/9. This was the first time she had been told of this. The representative for HMRC indicated that if she wanted a repayment it would seek payment for the tax it said was due and she might lose the case. As a
35 result, she decided to agree that the matter was resolved and that she would not pursue it further.

40 10. Mr Davison referred us to the action notes provided by HMRC one of which reads:-

"03/10/2008. MARD. 16/66/0492- Case reviewed,trans rec'd back Spanish OMS adv that they Coll puts from TP totalling 1,581.19 euros & have referred this pyt to us on 24/07/08 & **and now consider this case closed.....** (Our emphasis).

45 We note a further entry which states:-

"09/07/2008 MINUS WRITE AUTHORISED, PAPERS PASSED TO REMIT TER-SP13"

We consider these entries corroborate Mrs Davison's statement that the monies would be retained if she did not pursue the matter. The 2000/1 and 2001/2 tax has not been refunded to Mrs Davison and no further contact was made by HMRC until 2012.

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11. On her return to the United Kingdom in 2011 Mrs Davison filed her self-assessment return for the years 2009/10 which revealed a refund of £1500. In its letter of 28 September 2012 HMRC confirmed that amended assessments had been raised for the years 1997/98 and 1998/9 and that, as Mrs Davison had failed to appeal within the 30 days from the closure of the enquiry in May 2000, she was now out of time. Mrs Davison asked for a review which was given on 26 October 2012. The review confirmed that she was out of time and that she could ask HMRC for her appeal to be heard out of time, which she did on 18 September 2012. We assume that HMRC refused the application because her Notice of Appeal to the Tribunal is dated 13 January 2013 and HMRC have taken no objection to that being filed.

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Submissions.

12. Mr Burke submitted that the assessments for 2000/1 and 2001/2 were not due and had been cancelled. The enquiry for the year 1996/7 had been opened whilst Mrs Davidson had been in the United Kingdom and she has confirmed that she was aware of that. No tax liability arose from that return. Unfortunately, as twelve and a half years have elapsed since the assessment all HMRC paper records have been destroyed. He had been able to obtain the necessary details for the assessments from HMRC computer records. Her accountant had been involved and she must have been aware of the position. He confirmed that the profit for the following year 1997/8 had been increased pro rata from the previous year 1996/7. HMRC had endeavoured to trace Mrs Davison as evidenced by the many attempts revealed in the departments notes.

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13. HMRC had contacted Mrs Davison in July 2008 and advised her that the outstanding amounts related to the enquiry years and she should have made contact then. A further 4 ½ years had passed since that call, which amounts to an unreasonable delay. Mr Burke suggested that as Mrs Davison had an accountant it would have been usual for her accountant to deal with the enquiry. No evidence was produced, nor do we suspect could be produced, to that effect in view of the destruction of the papers. HMRC contends that Mrs Davison was aware of the amendments and that she should have appealed at the time and the applications for the late appeal should be rejected.

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14. Mr Davison submitted that his wife had always complied with her tax obligations. She had notified HMRC when she started her hairdresser business; she had notified the Spanish tax authorities when she started working in Spain; and she notified HMRC of her tax status when she returned to the United Kingdom in 2011. She accepts that she was aware of the enquiry for the year 1995/6 but as she understood, that there was no tax due as agreed by HMRC, she was unconcerned as to her tax affairs as she had left the United Kingdom. She could not have known of the further enquiries as she was no longer in the United Kingdom.

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15. When she spoke to HMRC on 8 July 2008 she was told that there was no tax due for the years 2000/2 and 2001/2 as she had not been self-employed in the United Kingdom during that period. She had asked that the money deducted from her account should be repaid, but at that point was advised that she still owed tax on the amended assessments for the periods 1997/8 and 1998/9. She was told that if she wished to have her money refunded HMRC would pursue the further assessments and that she might be unsuccessful. On that basis she said that she would not ask for her money to be refunded and she understood that HMRC would not pursue its claim for the alleged outstanding tax. On that basis HMRC are not entitled to pursue the earlier assessments and Mrs Davison has a reasonable excuse for not appealing in 2008 as she understood, as shown by the evidence produced to the Tribunal, that no further tax was due. Now she has no alternative but to ask for the right to appeal the 1997/8 and 1998/9 amended assessments out of time.

15 **The decision**

16. We have considered the law and the facts and we allow the appeal. We found Mrs Davison to be an honest and straight forward individual. She understands her taxation obligations and has properly notified all parties as to her tax status both in the United Kingdom and Spain. We are satisfied that when she spoke to HMRC on 8 July 2008 HMRC had agreed that, if she did not ask for the repayment of the monies incorrectly withdrawn from her Spanish bank account, they would not pursue the amendment tax liability arising from the 1997/8 and 1989/9 tax returns. There is documentary evidence, contained in the notes presented to the Tribunal, that that was the case. We also note that HMRC have not repaid the tax assessed on the years 2000/1 and 2001/2 which was cancelled by HMRC. We would have expected the amended assessments for 1997/8 and 1998/9 to be pursued if it had been the intention not to keep the payment other than as a set off against the full amount of tax due on the amended assessments.

17. We have been referred to *Former North Wiltshire District Council v The Commissioners for her Majesty's Revenue and Customs* TC00714. There have been several further tribunal decisions as to whether this Tribunal should be bound by the terms of the CPS. We have set out above those matters that the High Court would take into account when considering whether there should be a right of appeal out of time. We are bound to say that, although the Tribunal is not bound by those rules, it will need to consider matters within its own requirement to act fairly and justly that fall within similar considerations, which we have done in this case.

18. We are satisfied that Mrs Davison believed that her tax affairs had been concluded on 8 July 2008 when she spoke to HMRC and she was told that it would not pay back the tax incorrectly deduct and that it would not pursue the earlier assessments. There appears to have been no attempt to contact Mrs Davison since July 2008 up to HMRC's refusal to allow a repayment of £1500 to Mrs Davison in 2012. She was and is entitled to believe that the earlier assessments had been vacated and it was not, therefore, unreasonable for her not to appeal.

19. HMRC have had from January 2001 until it received Mrs Davison's return in 2011 to confirm that the amended assessments were still due. It has not done so. There was nothing that Mrs Davison believed she needed to do to settle the matter as both she and HMRC appear to have agreed in July 2008 that the 1997/8 and 1998/9 assessments would not be pursued. We would suggest that if the matter is to proceed given the facts and that the original documentation has now been destroyed that HMRC could have no reasonable prospect of establishing the basis of the assessments for 1997/8 and 1998/9.

20. 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.

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**DAVID S PORTER
TRIBUNAL JUDGE**

RELEASE DATE: 13 December 2013

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