



TC03707

Appeal number: TC/2013/06353

Income Tax – Strike out application – repayment claims - personal tax returns submitted late –equitable liability claimed - held – equitable liability not available – failure by HMRC to consider equitable relief outside jurisdiction of tribunal- no legal basis on which time limits could be extended –strike out allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JANET LAWFORD

Appellant

- and -

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

**TRIBUNAL: JUDGE RACHEL SHORT
MR MICHAEL BELL**

Sitting in public at 45 Bedford Square, London WC1B 3DN on 22 May 2014

Mr Cockburn of Wall & Co accountants for the Appellant

**Mr Bradley instructed by the General Counsel and Solicitor to HM Revenue and
Customs for the Respondents**

DECISION

1. This is a request for the Appellant's appeal to be stuck out under Rule 8(2) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 ("the Tribunal Rules"). The appeal concerns a refusal by HMRC to accept late self-assessment returns for the 2005 - 6 and 2006 - 7 tax years made by Janet Lawford. The self-assessment returns for both of these years were submitted by Miss Lawford on 27 January 2012.

Facts

2. The Appellant, Miss Lawford is a UK tax resident individual who was issued with self - assessment tax returns to her correct home address in 2006 and 2007. Miss Lawford did not complete these returns or any returns for the periods up to 2009 - 10 or enter into any other correspondence with HMRC until 27 January 2012 when returns for all of the outstanding periods were submitted. HMRC had sent 14 statements of account including penalties for non-submission of returns to the Appellant in the intervening period.

3. The Appellant's representatives Wall & Co applied to HMRC on 19 October 2012 to make a late appeal for repayment of over paid tax in respect of the 2005 - 6 and 2006 -7 tax years amounting to £49,033.37. HMRC refused to accept Miss Lawford's self - assessment returns for 2005 - 2006 and 2006- 2007 on which the repayment claim was based and notified Miss Lawford's representative of this on 24 February 2012. Miss Lawford appealed against this decision to this Tribunal on 9 September 2013

4. Miss Lawford paid £4,000 to HMRC in January 2012. It is not clear on what basis this was paid. Miss Lawford has significant tax liabilities due for later years which are smaller than the amount of the repayment claimed for 2006 and 2007.

5. Miss Lawford's over-payments arose as a result of income from her US share options being taxed in both the UK and the US. The taxation of this share scheme income was handled by Miss Lawford's employer.

The Law

6. The relevant legislation concerning the time limits for making reclaims of over paid tax is at:

7. Paragraph 3(1) of Schedule 1AB Taxes Management Act 1970 ("TMA 1970"):

"A claim under this schedule may not be made more than four years after the end of the relevant tax year".

The four year time limit is therefore 5 April 2010 and 5 April 2011 for the tax years in dispute.

8. The circumstances in which this time limit can be extended are set out in paragraph 3A (1) of Schedule 1AB Taxes Management Act 1970:

"This paragraph applies where

(a) a determination has been made under section 28C of an amount that a person is liable to pay by way of income tax or capital gains tax, but the person believes the tax is not due or, if it has been paid, was not due”.

5 These provisions were introduced by SI 2011/1037 to replace the old concession operated by HMRC known as “equitable liability” and apply to claims made after 1 April 2011.

S28C TMA 1970 sets out when and how a “determination” is to be made:

28C(1) *This section applies where-*

10 *(a) a notice has been given to any person under section 8 or 8A of this Act (the relevant section),*

and

(b) the required return is not delivered on or before the filing date.

15 *28C(1A) An officer of the Board may make a determination of the following amounts, to the best of his information and belief, namely-*

(a) the amounts in which the person who should have made the return is chargeable to income tax and capital gains tax for the year of assessment; and

(b) the amount which is payable by him by way of income tax for that year.....

20 **The Respondent’s Arguments**

9. HMRC argued that the appeal should be struck out because there was no legal basis on which a self-assessment return could be accepted outside the statutory four year time limit. The Tribunal does not have jurisdiction to consider whether there is any other basis on which the four year time limit could be extended by HMRC’s
25 exercise of its discretion, whether by reference to equitable liability or otherwise.

10. The Appellant’s advisors had referred to the concept of “equitable liability” to support their position that the appeals should be accepted despite being out of time but HMRC pointed out that the Extra Statutory Concession which provided taxpayers with relief on the basis of equitable liability was no longer in force, having been
30 replaced in April 2011 by statute; SI 2011/1037, which had introduced paragraph 3 of Schedule 1AB of the TMA 1970, the “special circumstances” provisions.

11. HMRC explained that the basis of “equitable liability” had been to ensure that HMRC could not act to the disadvantage of other creditors in an insolvency situation by making large estimated assessments to tax. It had been recognised that this risk no
35 longer existed with the introduction of self -assessment and under current legislation (which applied to the claims in question) “equitable liability” can only be relied on if there has been a “determination” under s 28C Taxes Management Act, in circumstances where no self-assessment had been made.

12. Despite the lengthy period for which these self-assessments had been outstanding, no “determination” had been made on Miss Lawford and therefore these new rules could not be applied to her.

5 13. HMRC stressed that there was no other basis on which the statutory four year deadline could be extended. HMRC recognised that this effectively left the taxpayer with no means of appealing against this over-paid tax, but concluded that this was a result of her having failed to complete her self-assessment returns on time.

Appellant’s Arguments

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14. For Miss Lawford, Mr Cockburn stressed that Miss Lawford deserved to have her substantive appeal and the reasons for the lateness of her returns for 2005 - 6 and 2006 -7 heard. This was a case which was suitable for this Tribunal and it would be a breach of natural justice if Miss Lawford’s case was not heard. The Tribunal should
15 exercise its discretion in Miss Lawford’s favour and take account of her unusual set of circumstances.

15. Mr Cockburn made clear that there was no dispute that the self-assessment returns for each of the years in question had been made late, but this was due to unusual circumstances; Miss Lawford had been unable to obtain information which
20 she required about the value of her US share options and had decided that it was better not to put in tax returns for those years rather than complete inaccurate returns. Miss Lawford’s tax issues were dealt with by her employer and she was unfamiliar with the complex nature of the tax rules.

16. Mr Cockburn accepted that there were no technical arguments in Miss
25 Lawford’s favour but threw himself on the mercy of the Tribunal, saying that if the old principle of equitable liability had still applied, this case would have been considered by HMRC.

17. Miss Lawford had completed her tax returns as soon as reasonably practicable and had no intention to avoid paying tax, she merely wanted to be able to claim a
30 credit for tax which had been over paid for 2005 - 6 and 2006 - 7, against sums which she was due to pay for later tax years.

Discussion

18. It is not in dispute that Miss Lawford's self - assessment returns for 2005- 6 and
35 2006 -7 were made out of time. It is also clear that there is no basis in the legislation on which either HMRC or the Tribunal can extend these time limits. No determination was made on Ms Lawford and therefore the “special circumstances” rules at paragraph 3 of Schedule 1AB of the TMA 1970 are not available to Miss Lawford.

19. The current legislation which does apply to Miss Lawford reflects the changes brought about with the introduction of self-assessment and the onus on the taxpayer to
40 provide HMRC with information about their taxable income, which Miss Lawford failed to do.

20. The Tribunal accepts that a taxpayer in Miss Lawford’s position might feel aggrieved that partly as a result of HMRC failing to issue a determination and partly as a result of the removal of a more generous extra statutory concession, they are left

in a position where they are not able to make a re-claim for a significant amount of over-paid tax. However, the extra statutory concession by reference to which HMRC applied in certain circumstances “equitable liability” is no longer in force and even if it was, the Tribunal does not have the jurisdiction to interfere in the exercise of HMRC’s discretion, the only remedy for which is by way of judicial review. Mr Cockburn referred to the application of “natural justice”, referring to the fact that while Miss Lawford was being forced to make payments for the years in which she had under paid tax, she could not make a re-claim for the years in which she had overpaid. However the ability of this Tribunal to deal with the exercise of HMRC’s discretion or its administrative procedures by reference to any supervisory jurisdiction is restricted as made clear in the *HMRC v Hok* ([2012] UKUT 363 (TCC)) and *HMRC v Abdul Noor* ([2013] UKUT 071 (TCC)) decisions.

21. Even if we were able to consider such concepts, we would expect a taxpayer who is arguing for equitable relief or natural justice to demonstrate that they have acted reasonably in handling their tax affairs. It is not clear to this Tribunal that this is true of Miss Lawford. We have not heard the details of why Miss Lawford was not able to obtain the information which she required in order to complete her tax returns, but would comment that we would expect a taxpayer in her position asking for equitable relief to be able to demonstrate that they have acted with at least a reasonable degree of diligence in attempting to deal with their tax affairs.

22. The Tribunal has concluded that there is little merit in the arguments made by Mr Cockburn on behalf of Miss Lawford and are granting HMRC’s request that this appeal be struck out under Rule 8(2) of the Tribunal Rules on the basis that the Tribunal does not have the jurisdiction to consider whether HMRC should have applied a concessionary treatment to Miss Lawford on the basis of “equitable liability”.

23. 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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**RACHEL SHORT
TRIBUNAL JUDGE**

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RELEASE DATE: 11 June 2014

