[2015] UKFTT 0539 (TC)

TC04693

Appeal number: TC/2015/04417

CGT – Principal Private Residence Relief - meaning of residence - multiple properties - not main residences - relief denied – penalties - deliberate or careless – appeal refused for PPR relief – allowed in part for penalties

FIRST-TIER TRIBUNAL
TAX CHAMBER

WILLIAM P HARRISON **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MEMBER: MRS EILEEN A SUMPTER, WS

Sitting in public at George House, 126 George Street, Edinburgh on Wednesday 6 May 2015

The Appellant in person

Ms S McMullen, Officer of HMRC, for the Respondents.

Sitting in public at George House, 126 George Street, Edinburgh on Thursday 22 October 2015

Submissions from the Respondent dated 15 May 2015
Submissions from the Appellant dated 7 September 2015

DECISION

Background

1. The original appeal in this matter was under reference TC/2014/01853 and the hearing was on 6 May 2015. Towards the end of that hearing it became clear that although both parties had thought that the appeal related to the tax years 2009/10 and 2010/11 it seemed that, possibly, there was in fact extant only an appeal in regard to 2009/2010.

2. On 25 June 2015, the Tribunal issued detailed Case Management Directions, a copy of which is annexed at Appendix 1. Those Directions set out the chronology and the outstanding issues. Thereafter a competent appeal in regard to 2010-2011 was lodged with the Tribunal. Both parties requested that the two appeals be consolidated since evidence had been led by both parties in regard to both tax years.

2. By Directions dated 2 September 2015 the Tribunal consolidated appeals TC/2014/01853 and TC/2015/04417 to proceed under the latter reference and the consolidated appeal be listed to be determined without a hearing in terms of Rule 29(1)(a) of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and a copy of those Directions are annexed at Appendix 2.

The Issues

3. HMRC's Statement of Case indicated that the first point at issue was whether or not private residence ("PPR") relief in terms of section 222 Taxation of Chargeable Gains Act 1992 ("TCGA") is due on the sale of six properties disposed of by the appellant during the tax years 2009/2010 and 2010/2011.

4. The second issue is whether there are penalties arising in terms of Schedule 24 Finance Act 2007 for submitting tax returns containing an inaccuracy leading to an understatement of liability.

5. At the outset of the hearing, the appellant intimated that he had withdrawn his claim for PPR relief in relation to the three flats at Armatage Street, Eyemouth. That then left four flats, not the three identified by HMRC, being 2 Ross and 2 Bay Terrace and 17 and 19 Coxons Lane.

6. The disposal of 2 Ross was in 2009/10 and the remaining properties in 2010/11.

The Facts

7. On 11 January 2012, HMRC opened an enquiry into the appellant's 2009/10 self-assessment tax return under Section 9A Taxes Management Act 1970 ("TMA"). In the course of that enquiry it became apparent that there might also be issues in regard to the appellant's 2010/11 return. The Schedule of information and documents served on the appellant stated amongst other matters that: *"In the last twenty years you seem to have claimed PPR relief for nearly as many residences. In the year of the enquiry you sold four*

properties and claim PPR relief on all 4 properties. This is despite 3 of the properties being within the same flat complex. Why would you reside at each of the flats within the development if it were not for the purpose of obtaining PPR relief?"

8. The appellant responded on 18 January 2012. In that letter he explained that he owned two farms which were three miles apart. The first is Laverock Braes with an old farmhouse/steading in very poor condition and the second "Blackpotts". Where we refer to "the farmhouse" in this decision it is to Blackpotts that we refer. He explained that over the years he had purchased property as he has a particular liking for old and unusual buildings and he found it necessary and financially sensible to let them out but he did like to use them himself. He preferred to spend some of his time elsewhere than his two farmhouses which were unmodernised and remote. He stated explicitly: "*I do not simply change my address to obtain PPR relief but I am aware of the tax implications of PPR elections and so they are made."* He did not furnish the requisite information at that time. Later he sent some information to HMRC describing the properties as second homes and concluding the letter stating: "*Also I value my driving licence which is another reason for staying in Eyemouth rather than driving to the farmhouse late in the evening."*

9. HMRC responded on 19 April 2012 pointing out that he had produced no evidence supporting the claimed residence other than Council Tax documents, which, of course had been generated in response to information that he had provided to the Council.

10. Ultimately, since the requested information had not been provided, on 17 December 2012 HMRC issued an Information Notice under Schedule 36 Finance Act 2008. On 14 January 2013 the appellant replied stating that he could not comply without sight of a previous letter from HMRC. That was sent to him and he replied on 15 February 2013, without producing any documentation.

11. In the 14 January 2013 letter he stated: "*I am sorry that you have had difficulty contacting me by telephone. I am rarely at the farmhouse but I do check my mail daily."* The 15 February 2013 letter expanded on his use of the farmhouse stating that he was at the farmhouse every day as part of his livestock farming business but it was not a house that he wanted to live in as it was cold and draughty. He picked up the mail daily when working and he ensured that he was resident there on the relevant date in October so that he could keep his address on the register of voters.

12. We explored the appellant's physical presence in the farmhouse with him in some detail. Initially he told us that he spent two or three days a week sleeping elsewhere than the farmhouse. On further enquiry, it transpired that that was only the case in the summer months, which he defined as being May until September. Even in summer, he was at the farmhouse working every day. In winter, being the months from November to January and then in the lambing season from February to April he basically lived in the farmhouse but occasionally he spent one night in another property. As the light got longer, and the driving was therefore easier he would spend more nights away from the farmhouse. That was when he would spend two or three nights a week in another property.

13. He had a TV, telephone and answering machine in the farmhouse but not in any other properties.

14. He said that the furniture and other belongings that he moved between the properties were easily transported since he had a Volvo car and a trailer. There was not a great deal to move and that was why he could move for example from 19 Coxons Lane to 6 Scotts Place on the day that the tenants moved out of the latter property.

15. In what he described as his second homes, he kept a change of clothing and cooking utensils. He said that he had "*sufficient stuff to function*". He confirmed that most of that which he possessed he kept at the farm because if he needed something, at most, it was only a 20 minute drive to collect it.

16. He had no hobbies and spent his evenings doing paperwork. Latterly, he kept his computer in the farmhouse and prior to that his word processing equipment or electric typewriter.

17. Initially, he told the Tribunal that basically he did all his washing at the farmhouse; if staying elsewhere, he would jump in the car and take his washing back to the farmhouse. Latterly, when he was being questioned as to why he had retained the property at 2 Ross unfurnished and unoccupied for a number of years after he vacated it before he sold it, he said that there was a washing machine there so he would go and do his washing there. It was put to him that that seemed somewhat unlikely since (a) unoccupied properties tended to deteriorate and (b) if it was unfurnished going there to do the washing seemed odd. He said that he had kept a "close eye" on the property and he did not remain in the property whilst the washing machine worked…he would go back later to collect the washing. We noted the inconsistencies and did not find that explanation credible.

18. It was only after the hearing that we had an opportunity to examine, in any detail, the two bundles provided.

19. From that we have established that, during the period he lived in the farmhouse (and we have no information about Laverock Braes), he states that he lived in the following properties for the following periods and disposed of them thereafter as noted:-

Property	**Elected main residence**	**Notes**
8a Longstone View	14/04/97 to 15/08/97	Leased from 01/04/05
26 West End	18/01/01 to ?	Leased
170 Main Street	21/06/01 to 01/12/01	Sold 01/04/06 to connected family company Snipe Moss Ltd

170 Main Street	02/02/03 to 01/04/03	
Ground flat at 2 Armatage	01/04/03 to 01/09/03	Leased and sold late 2009
First flat at 2 Armatage	01/09/03 to 15/02/04	Leased and sold late 2009
19 Coxons Lane	15/02/04 to 01/11/04	Leased then sold 31/03/11
6 Scotts Place	01/11/04 to 23/12/05	Sold to third party 23/12/05
17 Coxons Lane	02/11/05 to 01/06/06	
2 Ross	01/06/06 to 30/10/06	Sold at the end of 2009
3 Blackpotts Cottages	30/10/06 to 26/12/06	Purchased 31/10/05 and repaired until 30/10/06
Top flat at 2 Armatage	01/04/07 to 24/12/07	Leased and sold at the end of 2009
2 Bay Terrace	17/04/09 to 19/10/09	Sold 15/04/10

20. In the appellant's written submissions he confirmed that the details contained in the bundles and in regard to his oral evidence were possibly incorrect in regard to the purchase dates for properties. He had purchased a number of properties in Berwick-upon-Tweed and Berwickshire in his own name and because that had produced a large director's loan account and a corresponding Section 419 tax liability. In order to rectify that, he had sold properties to the family company, Olive Hill Stock Farms Limited but was eventually able to repurchase them. The dates he had provided were the original purchase dates. We do not have detail of the dates of the transactions between himself and the company but they are not necessary for our consideration of this matter. There does not seem to be any suggestion that he personally did not own the properties with which we are concerned for any of the relevant periods. For the purposes of this appeal we are concerned only with whether or not the properties in question were principal private residences in terms of the meaning of the relevant legislation.

21. On checking the excerpt from the self-assessment return for the year 2005/06, we note that the appellant had made elections in terms of section 222(5) TCGA for four properties, namely 17 Coxons Lane, 2 Ross and 3 Blackpotts Cottages for his stated periods of occupation. However, the election for the ground floor flat at 2 Armatage was for the period commencing 26 December 2006 and was open-ended.

22. In the 2003/04 return, he had made similar elections for four properties, namely 170 Main Street and first floor flat 2 Armatage which were for the stated periods of occupation, and the top floor flat 2 Armatage for 01/04/03 to 01/09/03 and for 6 Scotts Place from 01/11/04 which was open-ended.

23. At the hearing the appellant produced copies of correspondence with HMRC in May and June 2005 showing that he had purchased 19 Coxons Lane on 31/05/03 and repaired it until 15/02/04 when it became his main residence until 01/11/04.

24. We assume a relevant election was submitted for 2 Bay Terrace.

25. We assume that all of the properties for which elections were made were described as his "main residence" just as those included in the 2003/04 and 2005/06 Returns were so described.

26. The three Armatage properties are now only material in the context of penalties but we note that in a letter to HMRC dated 2 May 2013, the appellant stated that all three properties had been bought in 2003, the ground floor flat had been let for some years and then occupied by him in 2006/07, the first floor flat had been occupied by him in 2003/04, then let and the top floor flat had been occupied by him in 2003 and then let. All three had then been sold at the end of 2009. That does not sit well with his letter to HMRC on 3 January 2015 when he said in regard to the top floor flat that he had occupied it from 26/12/07 (assumed to be a typographical error) to 01/04/07.

27. His stated reason for withdrawing his claims for PPR relief in relation to the Armatage flats on 27 October 2013 was that: "*I may have misunderstood the extent of PPR relief and therefore wish to withdraw my claim for the properties… as it could be said that my occupation of them was for convenience rather than as second homes*."

28. HMRC's response was that they considered that to be the position for all the properties. In his letter to HMRC on 3 January 2015, he stated that he still considered them to be second residences but he had withdrawn his claims because he thought that he might not be able to prove on the balance of probabilities that they were second residences and he again said that his occupation of them had been for convenience rather than as second homes.

29. We tried to explore with the appellant what he meant by "convenience" and his only explanation was that the town in which they were situated was not interesting, whereas he liked the location of the other properties.

30. The eligibility to PPR relief for the properties at 6 Scotts Place and 170 Main Street formed part of an earlier HMRC investigation of the appellant's self-assessment return for the year 2005/06. Of particular note is the letter sent from the appellant to HMRC in the course of that investigation dated 30 June 2008. The salient paragraphs read:-

"*The reason that correspondence continued to be sent to Blackpotts is that 170 Main Street, Spittal was a shared house and so I preferred my mail to remain private. For the same reason I did not change my address for bank accounts or tax returns.*

In both cases I continued to use Blackpotts as a second residence and made main residence elections for both 170 Main Street and 6 Scotts Place for the periods that I was also living in these properties."

27. He assured the Tribunal repeatedly that at no time had he thought that the farmhouse (Blackpotts) was anything other than his main residence. The other properties were definitively, and at all times, second homes. He stated that the fact that HMRC had granted PPR relief in the previous investigation vindicated his stance.

The arguments

31. HMRC say that the appellant has failed to prove that he resided at all or any of the properties in question with any degree of permanence or continuity or expectation of continuity. At all times, the appellant has exhibited both permanence and continuity at the farmhouse. Mere occupation of a property, for whatever reason, does not amount to residence. Before there can be a valid election for a dwelling house to be a PPR, the property in question must be used as a main residence. The appellant's actions were deliberate, the penalties have been reduced as far as possible and are correctly calculated.

32. The appellant argues that (a) he has never stated that any of the properties were his "only/main" residence, (b) all properties were used as second residences and he had made main residence elections in respect of them, (c) he was entitled to rely on the fact that HMRC had allowed him relief following the previous investigation, and (d) the appellant states that his tax returns were accurate and at worst any error in relation to PPR relief was careless but certainly not deliberate.

The law

33. The applicable legislation, being Section 222 TCGA, is not in dispute and the relevant provisions in relation to PPR are:-

"*222. Relief on disposal of private residence*

(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area….

(5) So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period—

(a) the individual may conclude that question by notice to the inspector given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to the inspector as respects any period beginning not earlier than 2 years before the giving of the further notice,

(b) subject to paragraph (a) above, the question shall be concluded by the determination of the inspector, which may be as respects the whole or specified parts of the period of ownership in question ….".

A number of cases were cited and we refer to them where appropriate.

Discussion

34. The key point is that relief is only available on the disposal of a dwelling house that has been the **only or main residence** at some point. That is Section 222(1)(a). Section 222(5) does not stand alone. Any property falling within that subsection must still qualify under Section 222(1)(a).

35. The appellant was very clear in his evidence to the Tribunal that at no stage had the farmhouse been anything other than his main residence. There are a number of inconsistencies in his evidence. Firstly, his argument that his occupation of the three Armatage properties was only for "convenience" as the town in which they were was not interesting, does not fit with his previous argument that he only bought interesting properties and these flats were all interesting. Secondly, the appellant's letter to HMRC dated 30 June 2008 (see paragraph 30 above) is not consistent with his letter to HMRC dated 3 January 2015 where he stated:

"*Firstly, as with the present claims, I never claimed that it* [170 Main Street] *was my main residence, but that it was the second residence, elected to be treated as my main residence."*

His explanation was effectively that he had made the election(s) so that had made his second home(s) his main residence when he stayed in them.

36. The problem with that is that the election in terms of section 222(5) is as between residences that are **both** only or main residences. The making of an election, by itself, cannot transform a property into an only or main residence. What is a residence?

Residence

37. There is no statutory definition of residence for these purposes. There is considerable case law on this point. It is clear that it is not a house, or indeed, a home that one simply stays in from time to time.

38. The appellant cited *Goodwin v Curtis*[1] and in particular referred to Schiemann LJ (as also did HMRC) who stated: *"I accept…the respondent's contention that in order to qualify for the Relief a taxpayer must provide some evidence that his continuity in the property showed some degree of permanence, some degree of continuity or some expectation of continuity.*" The appellant also referred to Millett LJ in the same case where he stated: "*Temporary occupation at an address does not make a man resident there. The question whether the occupation is sufficient to make him resident is one of fact and degree…*".

39. We agree with both of those propositions.

40. The appellant's oral evidence in regard to his occupation of the farmhouse did not sit well with either of the two stances that he had adopted in correspondence with HMRC.

[1] 70 TC 478

41. We accept the point made in *Frost v Feltham*[2] that where a taxpayer lives in two houses the question as to which is the principal or main house cannot be determined solely by reference to the allocation of time between the two, but nevertheless that is a relevant factor. The question of what is a principal residence is essentially one of fact and degree. That case is authority for the proposition that it does not suffice for the taxpayer to decide which is the principal or more important residence and the matter must be decided objectively.

42. On the balance of probabilities we find that the most time that he ever stayed in any property other than the farmhouse was no more than two or three nights in any week during the summer months. During the winter, he very rarely stayed anywhere other than the farmhouse. There were minimal furnishings and other possessions anywhere other than the farmhouse. If he was in town he preferred not to drive home late at night and stayed in one of his other properties. That is clearly a matter of convenience.

43. We accepted the appellant's definition of a second home as being somewhere he would prefer to be if it was not for the farm. He was clear that his primary occupation was as a livestock farmer. Many people in this country have second homes where they prefer to be when they are not working. Preference does not in itself make a property a main residence.

44. We are not persuaded by the argument that the fact that PPR relief was granted in the previous investigation means that relief should be granted in this appeal. Firstly, it is clear from the very limited correspondence that we have seen from that investigation that he represented to HMRC that he did not live at the farmhouse and that quite simply is, and was, untrue.

45. For a long time in this investigation, we can see that he tried to advance the same argument. At the outset of this hearing, he argued that he spent two or three days a week elsewhere than the farmhouse but that proved not to be the case.

46. Secondly, it was only in the course of their previous investigation that HMRC established that although he had claimed full PPR relief for 170 Main Street yet at all times there had been a number of tenants in the property as it was let out as bedsits.

Council Tax

47. We found the arguments on Council Tax to be peripheral. HMRC argued that firstly the Council had acted on information provided by the appellant and secondly that in each case the Council had described the properties as "unoccupied and furnished". The appellant argued that the Council had accepted that the various properties had been his second home and that that was standard wording for second homes. Many Councils at that time defined a second home as a dwelling, which is no-

[2] 55 TC 10

one's sole or main residence and is not an empty dwelling ie it is an unoccupied and furnished dwelling.

Summary

48. We have weighed in the balance all of the factors drawn to our attention in this matter. Specifically we have considered the amount of time spent in each of the properties, the degree of continuity and permanence, the furnishings and possessions, the activities carried on, the timing, the Council tax elections and, of course, Mr Harrison's oral evidence as to his lifestyle at the relevant time.

49. We find that the farmhouse was at all relevant times the appellant's only or main residence. No other property met the legal test.

Penalties

50. There was no dispute about the applicable legislation. Paragraph 1 of Schedule 24 Finance Act 2007 provides that a penalty is payable by a person where a person gives HMRC a Return and two conditions are satisfied. Those two conditions are:-

(a) That the return contains an inaccuracy which amounts to, or leads to, an understatement of a liability of tax, and

(b) That the inaccuracy was careless or deliberate, prompted or unprompted.

51. In this case since we find that at all times the farmhouse was the appellant's principal private residence notwithstanding the elections, there are therefore inaccuracies leading to an understatement of a liability to tax. The issue therefore in regard to penalties is whether or not those inaccuracies were careless or deliberate, prompted or unprompted.

52. Looking at the correspondence with HMRC, we have little hesitation in finding that the appellant tried very hard to give the impression that he rarely stayed at the farmhouse. That is evident from his statement that he ensured that he was resident in October for electoral purposes!

53. In the appellant's case he has bought and sold many properties and his *occupation* of many of them coincided with the termination of a lease or the period before a property was leased. The flat at 2 Armatage is a case in point. He stated that he occupied it as his main residence over the winter of 2004 before it was then leased. On the basis of his oral evidence, he may have spent a few nights there in September but he can barely have spent a night in the property between October and February.

54. We understand how HMRC have taken the stance that the appellant's behaviour in submitting incorrect returns was deliberate. However, having carefully considered the matter, and it is a finely judged issue, we disagree. It is abundantly clear to us that at all times the appellant has consistently believed that he simply required to make an election where he owned and occupied two properties at the same time. We do not

accept that the investigation into the previous Returns should have fortified him in his belief in that regard since as we have demonstrated the information provided to HMRC was, at best, misleading.

55. Mr Harrison is an articulate and intelligent businessman with multiple and extensive property experience over numerous years. There is considerable information available to the general public on, for example, HMRC's website, explaining precisely what does, or does not, constitute a principal private residence. Looking at the totality of the evidence we find that Mr Harrison has not behaved as a prudent and diligent taxpayer in submitting his returns with so many PPR elections.

56. The penalty percentage range for a careless inaccuracy with a prompted disclosure is a minimum penalty of 15% and a maximum of 30% of the potential lost revenue for both years. Within that range of penalty, the penalties can be reduced for each year by certain factors such as the behavior that led to the inaccuracy, whether the disclosure was prompted or unprompted and the quality of the disclosure.

57. On 10 November 2014, HMRC conceded that whereas previously they had not reduced the penalty in any regard, they were prepared to allow a 25% reduction for both helping and giving in both years and a 5% reduction for telling in 2009/2010. We agree with and confirm those deductions. Accordingly the original penalty imposed for 2009/10 of £23,321.20, reduced to £17,490.90, is now further reduced to £7,246.23 and the original penalty for 2010/11 of £23,902.90, reduced to £18,524.74, is now reduced to £7,683.07. For the avoidance of doubt, HMRC confirmed that they had considered the special circumstances for further reduction, as indeed did we, but none obtained.

Decisions

58. On the evidence before us, we find that the quality of the appellant's occupation of his second homes - the degree of permanence, the degree of continuity or the expectation of continuity- was not such as to amount to "residence" within the meaning of section 222 TCGA. It is very clear that his home and therefore his established main residence at all material times was his farmhouse. He certainly occupied other properties from time to time but that is different to residence for these purposes.

59. As to penalties, we find that the appellant's behaviour was careless in both years as opposed to deliberate and we therefore confirm reduced penalties in the sums of £7,246.23 for 2009/10 and £7,683.07 for 2010/11.

60. Accordingly, the appeal is dismissed in regard to capital gains tax and allowed in part in regard to penalties.

61. 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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ANNE SCOTT, LLB, NP

TRIBUNAL JUDGE
RELEASE DATE:28 OCTOBER 2015

APPENDIX 1

Appeal number: TC/2014/01853

FIRST-TIER TRIBUNAL

TAX

WILLIAM P HARRISON **Appellant**

- and -

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

DIRECTIONS and reasons therefor

TRIBUNAL: JUDGE ANNE SCOTT
MEMBER: EILEEN SUMPTER

WHEREAS

1. HMRC's Statement of Case indicated that the first point at issue was whether or not private residence ("PPR") relief in terms of section 222 Taxation of Chargeable Gains Act 1992 ("TCGA") is due on the sale of six properties disposed of by Mr Harrison during the tax years 2009/2010 and 2010/2011.

2. The second issue was whether there are penalties arising in terms of Schedule 24 Finance Act 2007 for submitting tax returns containing an inaccuracy leading to an understatement of liability.

3. At the outset of the hearing, Mr Harrison intimated that he had withdrawn his claim for PPR relief in relation to the three flats at Armatage Street, Eyemouth. That then left four flats, not the three identified by HMRC, being 2 Ross and 2 Bay Terrace and 17 and 19 Coxons Lane.

4. The disposal of the property at 2 Ross was in 2009/10 and the disposal of the three remaining properties was in 2010/11.

5. We heard evidence from Mr Harrison who explained in considerable detail when, where and why he had occupied each of the properties, and indeed other properties.

6. We had one large bundle containing copies of the documentation and the correspondence between the parties but that was only provided to us by the administration minutes before the hearing. In general, both tax years appeared to have been considered together by both parties.

7. At the conclusion of the hearing, whilst HMRC were making closing submissions, I questioned the variation in the review decision, which HMRC referred to as "due purely to a procedural matter". We had had only an opportunity to peruse the bundle in passing, and in minimal detail, but it seemed that the variation, although "procedural" in the sense that HMRC had made an error and not followed correct procedure, gave rise to substantive problems.

8. The factual position is that:

(a) the review decision was issued on 6 March 2014 and it was duly appealed on 3 April 2014,
(b) the review decision stated that the original decision was varied because the closure notice for 2009/10 had included the details of the additional tax due for 2010/11 and therefore an amended closure notice would be issued for 2009/10 with a revenue assessment for 2010/11,
(c) those were issued on 11 March 2014,
(d) it seemed that the assessment has never been appealed.

9. Accordingly, I directed that HMRC lodge with the appellant and the Tribunal a written submission addressing the variation. They did so by letter dated 15 May 2015.

10. The effect of HMRC's submission is that it is now recognised that although they have always treated the appellant's appeal as being in respect of both years, that cannot be the case. They therefore argue that the part of the appeal relating to the tax year 2010/11 should be struck out since the Tribunal has no jurisdiction, because the assessment has not been appealed to HMRC. That would mean that the assessment remains in force. They state that they would not object to a late appeal being lodged.

11. The Notice of Appeal was lodged with the Tribunal, not with HMRC, so on the face of it, it would appear that the assessment probably has not been appealed to HMRC.

12. HMRC have not addressed the question of the "amended" closure notice. The original closure notice was dated 9 December 2013 on form ITSA28. The closure notice dated 11 March 2014 purports to be a new closure notice and was also on form ITSA28 but that form had been substantially amended with deletion of the paragraphs dealing with what a taxpayer should do if not in agreement. HMRC appear to accept that the 2009/10 appeal is validly made.

13. This appeal had already been postponed on one occasion, having previously been set down for hearing on 18 December 2014.

14. Mr Harrison is unrepresented and he cannot be expected to have anticipated the technical issues here.

15. HMRC had not identified the correct approach. We do not know if there was correspondence between the parties that could be taken as an appeal.

16. We are very concerned that, from Mr Harrison's perspective, he had every reason to believe that the hearing in this appeal was the end of the matter and that having heard his evidence we would decide on the facts and then apply the law.

17. The issue now is how matters proceed from here. If we adopt the approach suggested by HMRC, then there would have to be a decision on the question of strike out and Mr Harrison would have to appeal the assessment to HMRC as soon as possible. HMRC would have to consent to the late appeal and Mr Harrison would then have to lodge a new Notice of Appeal with the Tribunal. Meanwhile, we would have to issue a decision on the tax and penalties for 2009/10. Thereafter, the appeal for 2010/11 would progress and Mr Harrison, through no fault of his would have to go through the whole process and possibly give evidence again.

18. That seems time consuming, cumbersome, and expensive.

19. We have had due regard to Rule 2 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") which reads:

"***2.—Overriding objective and parties' obligations to co-operate with the Tribunal***

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the Tribunal effectively; and
(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and
(b) co-operate with the Tribunal generally."

20. We wish to minimise the inconvenience to Mr Harrison and avoid delay insofar as possible. Effectively, this appeal has already been heard in full in respect of both tax years.

21. We consider that it would be more appropriate to sist the appeal for a period of, say, three months. That means that we would not consider the strike out application and we would not draft the decision in this matter. Effectively this appeal would be "put on the shelf".

22. Both parties would check whether in fact the assessment had been appealed ie whether there is any correspondence, which would amount to an appeal.

23. If it has not been appealed to HMRC, which it seems that it probably has not, Mr Harrison should immediately appeal the assessment dated 11 March 2014 and HMRC would accept that late appeal. In either case, Mr Harrison would then lodge a Notice of Appeal with HMCTS (if the assessment had been appealed to HMRC previously then he would ask for the late appeal to the Tribunal to be accepted and HMRC would consent). Both parties would ask that that new appeal be consolidated with this appeal in terms of Rule 5(3)(b) of the Rules. In the circumstances it would be appropriate for HMRC to ensure that HMCTS have all relevant information to enable appropriate case management directions from the outset. The sist in this appeal would then be recalled and unless either party wished to lodge new evidence or expand upon the submissions then a decision covering both appeals would be issued by us.

NOW THEREFORE IT IS DIRECTED that

1. Within 14 days of the date of issue of these Directions, both parties shall confirm in writing to the Tribunal and to each other whether (a) there is correspondence amounting to an appeal of the assessment dated 11 March 2014 and (b) if they agree with the proposed course of action in this matter.

2. Within 14 days of the date of issue of these Directions, HMRC shall formally confirm to the Tribunal and Mr Harrison that they accept, as they appear to, that the closure notice (in regard to 2009/10) dated 11 March 2014 has been validly appealed.

3. Within 21 days of the date of issue of these Directions, Mr Harrison shall confirm whether or not he has appealed the assessment (in regard to 2010/11) dated 11 March 2014.

4. Further Case Management Directions will be issued by the Tribunal thereafter.

TRIBUNAL JUDGE

RELEASE DATE: June 2015

APPENDIX 2

Appeal number: TC/2015/04417

FIRST-TIER TRIBUNAL
TAX CHAMBER

WILLIAM P HARRISON **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP

WHEREAS

1. The appellant has lodged a Notice of Appeal in TC/2015/04417 and HMRC have consented to the admission of a late appeal.

2. Both parties have requested that that appeal be consolidated with the appeal TC/2014/01853, which appeal has not in fact been sisted as anticipated in the Directions issued on 25 July 2015.

NOW THEREFORE IT IS DIRECTED that:

(1) The appeals TC/2014/01853 and TC/2015/04417 be consolidated and proceed under reference TC/2015/04417,

(2) The consolidated appeal, reference TC/2015/04417, shall be listed to be determined by Judge Scott and Mrs Sumpter without a hearing since in terms of Rule 29(1)(a) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 both parties have consented to the matter being decided without a hearing,

(3) HMRC's strike out application dated 15 May 2015 is refused,

(4) Although paragraph 20 of the Directions issued on 25 July 2015 indicated that "Effectively, this appeal has already been heard in full in respect of both tax years." nevertheless at paragraph 23 it was envisaged that the parties would have the option to lodge new evidence or expand upon submissions. Therefore should either party wish to lodge new evidence or expand upon the submissions then they must lodge same with each other and with the Tribunal by no later than fourteen days after the date of issue of these Directions.

TRIBUNAL JUDGE

RELEASE DATE: