



TC05996

Appeal number: TC/2016/04803

INCOME TAX – appeal against jeopardy amendment – whether Tribunal has jurisdiction pending closure of HMRC enquiries – s 9C, s 31 and s 49A Taxes Management Act 1970 – application to strike out the proceedings in accordance with rule 8(2) of the Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009 – application granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAMELA RANDALL

Appellant

- and -

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

**TRIBUNAL: JUDGE ROBIN VOS
JOHN ROBINSON**

Sitting in public at The Royal Courts of Justice, Strand on 30 June 2017

The Appellant did not appear and was not represented.

**Mr Gavin James and Miss Sukul, HMRC Solicitor's Office and Legal Services,
for the Respondents**

DECISION

Background

5 1. HMRC have opened enquiries into Mrs Randall's self-assessment tax returns for the tax years ended 5 April 2013 and 5 April 2014.

2. Although the enquiries have not been completed, HMRC have, in respect of both years, notified Mrs Randall of amendments to her self-assessment under s 9C Taxes Management Act 1970 ("TMA"). This section allows HMRC to amend a self-
10 assessment during the course of an enquiry if they believe that further tax is due and that, unless there is an immediate amendment, there is likely to be a loss of tax to the Crown. This is commonly known as a "jeopardy amendment".

3. Mrs Randall believes that these amendments are incorrect and has appealed to HMRC against them. There is no suggestion that Mrs Randall has not made a valid
15 appeal to HMRC.

4. However, Mrs Randall has also lodged a notice of appeal with the Tribunal against the jeopardy amendments for both years. HMRC have applied to strike out the proceedings on the basis that the Tribunal does not have jurisdiction to hear these appeals.

20 Mrs Randall's failure to appear and application to postpone

5. This appeal is linked to an application made by Mrs Randall to the Tribunal (and three similar applications made by related entities) requesting the Tribunal to direct HMRC to issue a closure notice in respect of their enquiries.

6. On 16 May 2017, the Tribunal informed Mrs Randall and her agent, Mr John
25 Jackson of Jackson Moughal, that the closure notice applications had been listed for hearing on 30 June 2017.

7. Mr Jackson wrote to the Tribunal on 30 May 2017 to advise that Mrs Randall would not be able to attend the hearing due to an operation on her back which meant that she was unable to travel until the end of August 2017.

8. The Tribunal replied to Mr Jackson on 7 June 2017 refusing to postpone the
30 date for the hearing of the applications. This was on the basis that a postponement would be inconsistent with the application for a closure notice as the effect of the postponement would be to allow HMRC to continue with their enquiries which is precisely that the appellants were asking the Tribunal to put an end to.

9. On 7 June 2017, the Tribunal also wrote to Mrs Randall and to R&R
35 Accounting and Taxation Services (the agents she had originally appointed to deal with the appeal against the jeopardy amendments) notifying them that the appeal against the jeopardy amendments had also been listed for hearing on 30 June 2017.

10. Mrs Randall emailed the Tribunal on the same day, making the point that Mr Jackson had already requested a postponement of the hearing and enclosing a copy of a letter from her surgeon which confirmed that she would not be able to travel for at least three months.
- 5 11. On 20 June 2017, Mr Jackson wrote to the Tribunal withdrawing Mrs Randall's application for a closure notice, citing confusion over the date of the hearing, not having received a response to his previous request for a postponement and Mrs Randall's inability to attend.
- 10 12. The Tribunal replied to Mr Jackson on 27 June confirming that the hearing of the strike out application in respect of the appeal against the jeopardy amendments were still due to be heard on 30 June 2017 along with the application for a closure notice by one of the associated entities. In fact, HMRC subsequently confirmed that it had issued a closure notice in respect of this entity and so that application no longer needed to be heard.
- 15 13. HMRC spoke to Mrs Randall on 29 June 2017 (the day before the hearing) who informed them that she was in Spain and would not be able to attend the hearing.
14. On the same day, Mrs Randall emailed the Tribunal asking for the hearing of the strike out application to be deferred until HMRC's enquiries had been resolved. Mrs Randall also stated in that email that she was unaware until she received an email
20 from HMRC on 29 June 2017 that the hearing of the strike out application had been listed for 30 June 2017. It appears that Mrs Randall may have got mixed up about the different hearings as it is clear from the Tribunal's file that she did receive the 7 June notice of the hearing of the strike out application and indeed replied to the email from the Tribunal containing the notice.
- 25 15. Against this background, the Tribunal had to decide whether to proceed with the hearing in Mrs Randall's absence or whether to postpone the hearing.
16. Rule 33 of the Tribunal rules permits the Tribunal to proceed with a hearing in the absence of a party if the Tribunal is satisfied that the party has been notified of the hearing and it considers that it is in the interests of justice to proceed with the hearing.
- 30 17. Mr James and Miss Sukul urged the Tribunal to proceed. They made the following points:
- (1) Mrs Randall clearly was aware that the hearing was due to take place.
- (2) Mrs Randall has had plenty of time to arrange for her agent to attend the hearing on her behalf.
- 35 (3) Mrs Randall and her agent have had sufficient notice of what HMRC intend to say and have therefore had an opportunity to make their own representations had they wished to do so.
- (4) The point at issue is a purely legal point and does not require any evidence from Mrs Randall.

(5) Even if the Tribunal strikes out the proceedings, Mrs Randall will not be prejudiced as she will be able to make a further appeal once HMRC's enquiries are completed.

18. It was clear to the Tribunal that Mrs Randall had been notified of the hearing.

5 19. Based on the reasons put forward by HMRC and listed above, the Tribunal was of the view that it was in the interests of justice to proceed with the hearing in Mrs Randall's absence.

Jeopardy amendments and appeals

10 20. Section 9C TMA applies where there is an open enquiry into a taxpayer's self-assessment tax return.

21. Section 9C(2) TMA provides as follows:

“9C(2) If the officer forms the opinion –

15 (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and

(b) that unless the assessment is immediately amended, there is likely to be a loss of tax to the Crown,

he may by notice to the taxpayer amend the assessment to make good the deficiency.”

20 22. Section 31 TMA (to the extent relevant) provides as follows:

“31(1) An appeal may be brought against –

(a) any amendment of a self-assessment under s 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),

25 ...

31(2) If an appeal under sub-section (1)(a) above against an amendment of a self-assessment is made while an enquiry is in progress none of the steps mentioned in s 49A(2)(a) to (c) may be taken in relation to the appeal until the enquiry is completed.”

30 23. This allows the taxpayer to appeal to HMRC but effectively suspends any further action in relation to that appeal until HMRC complete their enquiries. This is the effect of the prohibition in s 31(2) of taking any of the steps mentioned in s 49A(2)(a) to (c). Section 49A TMA is as follows:

35 “49A(1) This section applies if notice of appeal has been given to HMRC.

49A(2) In such a case –

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- (a) the appellant may notify HMRC that the appellant requires HMRC to review the matter in question (see s 49B),
 - (b) HMRC may notify the appellant of an offer to review the matter in question (see s 49C), or
 - (c) the appellant may notify the appeal to the Tribunal (see s 49D).”

The strike out application

10 24. HMRC provided a bundle which, amongst other things, contained copies of the notices opening enquiries under s 9A TMA into Mrs Randall’s tax returns for the years ended 5 April 2013 and 5 April 2014. The bundle also contained copies of the jeopardy amendments which, for the tax year ended 5 April 2013 was dated 17 August 2016 and for the tax year ended 5 April 2014 was dated 20 April 2016.

15 25. Mr James, on behalf of HMRC, submits that it is clear from s 31(2) TMA that, although a taxpayer can appeal to HMRC against a jeopardy amendment, no appeal can be notified to the Tribunal as the taxpayer’s right to do this is contained in s 49A(2)(c), which right is specifically suspended by s 31(2) TMA until HMRC’s enquiries are completed.

20 26. In this case, it is apparent that the enquiries have not been completed given that Mrs Randall had applied to the Tribunal for a closure notice to be issued but has now withdrawn that application.

27. On this basis, Mr James says that the Tribunal does not have jurisdiction in relation to any appeal at this time and that the proceedings must therefore be struck out under rule 8(2)(a) of the Tribunal rules which reads:

25 “8(2) The Tribunal must strike out the whole or part of the proceedings if the Tribunal –
(a) does not have jurisdiction in relation to the proceedings or that part of them;”

30 28. Rule 8(4) of the Tribunal rules provides that the Tribunal may not strike out proceedings under rule 8(2) without first giving the appellant an opportunity to make representations in relation to the proposed striking out. Mr James submits that Mrs Randall has had adequate opportunity to make representations in relation to the proposed striking out given that the strike out application was made in December 2016.

35 29. We note that the Tribunal did not notify Mrs Randall’s agent (R&R Accounting and Taxation Services) of the strike out application until 28 February 2017. R&R Accounting and Taxation Services responded on 2 March 2017 confirming that Mrs Randall intended to resist the strike out application. The only ground given for resisting the application was that “the sections quoted under TMA 1970 are not
40 relevant to this case”.

30. HMRC's strike out application refers to s 9C, s 31 and s 49A TMA. It also refers to s 29 TMA as an earlier discovery assessment had been made under s 29 TMA although the strike out application went on to explain that the discovery assessment had been cancelled.

5 31. It is therefore clear to us that HMRC, in its strike out application, have referred to the correct legislation which, for the reasons set out above, is indeed relevant to this appeal.

10 32. After Mrs Randall had submitted her appeal to the Tribunal, the officer of HMRC dealing with the case wrote to R&R Accounting and Taxation Services to explain why no appeal could be notified to the Tribunal until HMRC's enquiries had been concluded. This letter mistakenly referred to s 30(5) of schedule 18 to Finance Act 1998 which is the equivalent of s 31(2) TMA for corporation tax purposes. This mistake was repeated in HMRC's skeleton argument produced for the hearing on 30 June 2017 and which was sent to Mrs Randall on 27 June 2017. We have not
15 however placed any significant weight on this given that the strike out application itself (which is what R&R Accounting and Taxation Services were responding to) did in fact refer to the correct legislation.

20 33. In any event, a mistake in a reference to the legislation cannot affect the question as to whether the Tribunal has jurisdiction in relation to a particular matter which depends solely on the application of the correct legislation.

Decision

34. Section 31(2) TMA makes it clear that Mrs Randall cannot notify her appeal to the Tribunal until HMRC's enquiries are completed.

35. The Tribunal does not therefore have jurisdiction in relation to the proceedings.

25 36. Mrs Randall has had the opportunity to make representations in relation to the strike out application (and indeed, through her agent R&R Accounting and Taxation Services, has done so).

30 37. In accordance with rule 8(2)(a) of the Tribunal rules, the Tribunal must therefore strike out the proceedings. Mr James, on behalf of HMRC, said that he would be happy for the Tribunal to stay the appeal if it decided not to strike it out. However, it is clear to us that, as the Tribunal does not have any jurisdiction over the appeal, it must be struck out and cannot be stayed.

35 38. It is of course open to Mrs Randall to lodge a new appeal with the Tribunal once HMRC have completed their enquiries assuming she is not satisfied with the result of those enquiries.

39. 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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**ROBIN VOS
TRIBUNAL JUDGE**

RELEASE DATE: 06 JULY 2017

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