



**TC06180**

**Appeal number: TC/2017/00598**

*INCOME TAX – application to strike out proceedings – can Appellant  
appeal against her own self-assessment – no – section 31 Taxes  
Management Act 1970 – application allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LEONA VOLKWYN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ROBIN VOS**

**Sitting in public at Southampton Magistrates Court on 16 October 2017**

**Neither the Appellant nor the Appellant's representative attended the Hearing**

**Paul Hunter, HM Revenue & Customs litigator, for the Respondents**

## DECISION

### **The Appellant's failure to attend the Hearing**

1. On the day of the hearing, the tribunal clerk spoke to the Appellant's agent, Mr Hugh Smith of Lucie-Smith & Co. He was aware that the hearing was on 16 October but had not realised that this was today's date. As a result of this, neither he nor the Appellant were able to attend the hearing.
2. Mr Hunter had travelled to Southampton from Leeds and so was understandably keen that the hearing should proceed.
3. Mr Hunter submitted that no further evidence was needed in order to enable the tribunal to decide the strike out application. Indeed, he would have been happy for the tribunal to make its decision based purely on the papers before it.
4. Having read the papers in advance of the hearing, I am satisfied that the issues which need to be considered by the tribunal in deciding whether or not to strike out all or part of the proceedings are relatively straightforward and are set out in sufficient detail in the documents provided to the tribunal.
5. I am therefore satisfied in accordance with Rule 33 of the Tribunal Rules that the Appellant has been notified of the hearing and that, despite Mr Smith's confusion about dates, it is in the interest of justice to proceed with the hearing in the absence of the Appellant and of her agent.

### **Background**

6. The Appellant, Ms Volkwyn is a care worker who has been working in the UK for a number of years.
7. When she first came to the UK, she was told that she did not have to pay any tax as she was over sixty. It was only when she came to apply for British Nationality in 2011 that she discovered that this was not correct.
8. At that point, she appointed an accountant who filed self-assessment tax returns on her behalf for the year ended 5 April 2006 and subsequent tax years on the basis that Ms Volkwyn was self-employed.
9. Following a change of accountant in July 2015, she was advised by her new accountant (Mr Hugh Smith) that she was in fact an employee and was not self-employed. Mr Smith appealed against the assessments for each of the tax years ended 5 April 2006 – 5 April 2013 inclusive on the basis that the amounts received by Ms Volkwyn should have been treated as net amounts after deduction of income tax under the PAYE system and employer's national insurance contributions.
10. HMRC subsequently agreed that Ms Volkwyn had been an employee and not self-employed throughout this entire period.

11. HMRC did not however accept the appeals against the assessments for the relevant tax years on the basis that Ms Volkwyn clearly had received income without any tax having been deducted.

12. Ms Volkwyn, Mr Smith's assistance, therefore appealed to the Tribunal against all of the relevant assessments on the basis that it was for her employers to deduct the tax and employer's national insurance contributions and that the payments received by her should be treated as being net of these deductions.

### **Strike out application**

13. HMRC has applied to strike out Ms Volkwyn's appeal on the basis that the assessments in question are self-assessments and that a taxpayer has no right of appeal against their own self-assessment.

14. Rule 8(2) of the Tribunal Rules provides that:

“(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; and

....”

### **The assessments**

15. It is clear from the papers before the Tribunal that, although Ms Volkwyn's previous accountant had submitted tax returns on her behalf for the tax years ended 5 April 2006 and 5 April 2007, the assessments for those tax years are Revenue assessments and not self-assessments. This is confirmed in a letter from HMRC to Mr Smith dated 16 December 2016 and was also accepted by Mr Hunter at the Hearing. Mr Hunter explained that this may have had something to do with the fact that these tax returns were submitted more than four years after the end of the tax years to which they related (the returns being submitted in the summer of 2011).

16. The assessments for the tax years ended 5 April 2008 – 5 April 2013 inclusive are self-assessments.

### **Rights of Appeal**

17. A taxpayer's rights of appeal against income tax assessments are contained in section 31 Taxes Management Act 1970. Section 31(1) provides as follows:

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

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

(b) Any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),

(c) Any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or

(d) Any assessment to tax which is not a self-assessment.”

18. It is readily apparent that none of the cases set out in section 31(1) Taxes Management Act 1970 confer a right of appeal against the taxpayer’s own self-assessment. This is not surprising given that this is the taxpayer’s own assessment of the tax due.

19. Section 9ZA Taxes Management Act 1970 gives the taxpayer a right to amend a self-assessment but only where the amendment is made within twelve months of the date by which the tax return should have been filed (which is normally 31 January after the end of the relevant year assessment). Ms Volkwyn is therefore too late to amend her self-assessment, even for the tax year ended 5 April 2013 as the time limit for amending that tax return would have expired on 31 January 2015.

20. HMRC are therefore correct that Ms Volkwyn has no right of appeal against her own self-assessments for the tax years ended 5 April 2008 – 5 April 2013. The Tribunal does not therefore have jurisdiction to hear the appeal, so far as it relates to those tax years and, in accordance with Rule 8(2)(a) of the Tribunal Rules, I must therefore strike out that part of the proceedings.

21. If she has not already done so, Ms Volkwyn may wish to consider whether she has a claim against her previous accountants in relation to their advice to complete the tax returns on the basis of self-employment rather than employment.

22. The position is however different for the tax years ended 5 April 2006 and 5 April 2007. The assessments in question are not self-assessments but are Revenue assessments. Ms Volkwyn does therefore have a right of appeal against these assessments under section 31(1)(d) Taxes Management Act 1970.

23. These assessments were issued on 11 January 2013. Any appeal to HMRC against those assessments should therefore have been notified to HMRC by 10 February 2013 (see section 31A Taxes Management Act 1970).

24. HMRC does have a discretion to accept late appeals. It appears from HMRC’s letter to Mr Smith dated 16 December 2016 that they have accepted the late appeals, albeit that the appeals were rejected for the reason set out in that letter.

25. HMRC did not offer a review of their decision and Ms Volkwyn did not ask for one. Instead, she appealed direct to the Tribunal. This is a valid appeal and, if the matter cannot now be settled by agreement with HMRC, should proceed to a hearing.

### **Summary of decision**

26. HMRC’s application to strike out the appeals is allowed insofar as it relates to the tax years ended 5 April 2008 – 5 April 2013 inclusive.

27. HMRC’s application to strike out the appeals in relation to the tax years ended 5 April 2006 and 5 April 2007 is refused.

28. In the light of this, I propose to stay the proceedings until 31 January 2018 to allow the parties an opportunity to consider whether the remaining appeals can be resolved without the need for a Hearing, failing which, the directions set out in the appendix to this decision will take effect.

29. 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.

**ROBIN VOS**

**TRIBUNAL JUDGE**

**RELEASE DATE: 23 October 2017**

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## Appendix