



**TC07929**

*PROCEDURE – effect of general stay of proceedings – whether decision that finally disposed of all issues in the proceedings ended proceedings - application for extension of time – application for matter to be referred to Upper Tribunal under rule 7(3)*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/06112/P  
TC/2020/00242/P**

**BETWEEN**

**JAMES RITBLAT**

**Applicant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE GREG SINFIELD**

**Applications decided on the papers on 3 November 2020**

## DECISION

### INTRODUCTION AND BACKGROUND

1. This decision concerns the interpretation and effect of my direction, made on 24 March 2020, that all proceedings in the Tax Chamber of the First-tier Tribunal ('FTT') were stayed for a period of 28 days and all time limits in any current proceedings were extended by the same period ('the General Stay'). The parties interpreted the General Stay differently and this led them to make separate applications to the FTT. Before I describe the applications, it is necessary to put them in context.

2. The Applicant, Mr Ritblat, applied to the FTT for a direction that the Respondents ('HMRC') issue closure notices in relation to their inquiries into Mr Ritblat's self assessment tax returns for tax years 2015-16, 2016-17 and 2017-18. In a summary decision issued on 21 February 2020, Judge Kempster directed that HMRC should issue the closure notices by no later than 21 August 2020.

3. As stated above, the General Stay was issued on 24 March 2020. It was amended on 26 March to make clear that the stay and extension of time limits did not apply to any directions made after 24 March. The General Stay, as amended, stated:

"1. With immediate effect, ALL PROCEEDINGS are STAYED for a period of 28 days from the date of these Directions and ALL TIME LIMITS in any current proceedings are EXTENDED by the same period.

For the avoidance of doubt, this direction is subject to and does not affect any Directions in relation to specified proceedings made by the Tribunal on or after 24 March.

2. Any party to proceedings may apply for these Directions to be amended, suspended or set aside or for further Directions in relation to those proceedings."

4. Although parties and the FTT adapted to the new conditions, I considered that the General Stay should be extended in relation to certain cases. Accordingly, on 21 April, I issued a further stay in relation to cases that had been allocated to the Standard and Complex categories under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules') until the end of June and the dates for compliance with all time limits in those proceedings be extended by a further 70 days. That further stay did not apply to these proceedings as the application for closure notices had been allocated to the Basic category.

5. On 21 July 2020, HMRC wrote to the solicitors acting for Mr Ritblat. HMRC stated that the effect of the General Stay was that the date by which the closure notices must be issued had been extended to 18 September 2020. Mr Ritblat's solicitors replied the following day. They stated that the General Stay did not apply to the direction to issue closure notices. The solicitors pointed out that the General Stay only applied to extend the time limits in "current proceedings" and they submitted that the proceedings had come to an end on 21 February when the FTT released the decision ordering HMRC to issue the closure notices. They contended that the "the issue of closure notices is something done separately and independently by HMRC and is outside the scope of proceedings before the First-tier Tribunal."

6. On 31 July, Mr Ritblat's solicitors applied to the FTT for a decision as to whether the General Stay extended the time for complying with the FTT's direction in its decision of 21 February that HMRC must issue closure notices buy no later than 21 August.

7. In an email of 5 August 2020, Judge Kempster observed that if, as Mr Ritblat contended, there were no proceedings in the FTT then it was not clear that the FTT had

jurisdiction in relation to the application for a decision on whether the General Stay applied. Judge Kempster also stated that the decision of 21 February was intended to be a decision that finally disposed of all issues in the proceedings. Judge Kempster stated that if HMRC wished to make an application to vary the date for compliance in the decision of 21 February then they should do so as soon as possible.

8. On 21 August, HMRC applied to extend the time limit for complying with the direction to issue the closure notices to 18 September. The reasons given for the application were that HMRC had understood the General Stay to have extended the time limit for issuing the closure notices in the proceedings by 28 days. On the same day, Mr Ritblat's solicitors wrote to Judge Kempster in response to HMRC's application. They said:

"It is our view that the Tribunal does not have jurisdiction to deal with this application because the proceedings before you have been finally disposed of and rule 6(2) of the Rules does not allow for directions to be made once proceedings have concluded.

Moreover, there are no adequate grounds in the so called application for granting an extension of time and, in any event, the making of an application late on the day by which HMRC were obliged to comply with your order cannot remedy their failure to comply with it.

The only remedy available to the taxpayer for HMRC's failure which is appropriate to the situation is that provided by rule 7(2)(e) of the Rules.

In the circumstances, we ask you to exercise your power under rule 7 paragraph (3) to refer the matter to the Upper Tribunal, so that it can exercise its power under section 25 of the Tribunals, Courts and Enforcement Act 2007 in relation to the failure by HMRC to comply with your requirement that they produce a document - a closure notice - by no later than 21 August 2020."

9. In a letter dated 3 September from the FTT to the parties, Judge Kempster asked whether the parties were content for HMRC's application of 21 August for an extension of time to be determined on the papers (and, if so, whether they wished to make final written submissions) or wished it to be heard at a video hearing.

10. In a letter dated 4 September, Mr Ritblat's solicitors confirmed that Mr Ritblat was content for HMRC's application for an extension of time to be considered on the papers and did not wish to make further submission. In the letter, Mr Ritblat essentially maintained his submissions set out above, namely that the FTT did not have jurisdiction to extend the time limit, HMRC were in breach of the FTT's direction of 21 February and the only remedy available was for the FTT to refer the matter to the Upper Tribunal.

11. On 10 September, HMRC wrote to the FTT to say that they were content for the matter to be dealt with on the papers and would appreciate the opportunity to provide final submissions. On the same day, Mr Ritblat's solicitors wrote to the FTT to complain about HMRC's dilatoriness and once again asked for the matter to be referred to the Upper Tribunal.

12. On 17 September, the FTT directed that written submissions should be provided by no later than 30 September.

13. On 18 September, HMRC issued the closure notices in relation to their inquiries into Mr Ritblat's self assessment tax returns for tax years 2015-16, 2016-17 and 2017-18.

14. HMRC provided their written submissions on 24 September.

## DISCUSSION

15. There are three issues that I must consider in this decision. The first is whether the General Stay applied to the FTT's direction of 21 February 2020 that HMRC should issue closure notices by no later than 21 August and extended the time limit for doing so by 28 days, ie to 18 September. If the answer to the first question is yes then I do not need to consider the other issues. If the General Stay did not extend the time limit then I must consider whether HMRC's application of 21 August to extend the time limit to 18 September should be allowed. If I decide to refuse the application and HMRC had accordingly failed to comply with the FTT's direction then I must consider whether to refer the failure to the Upper Tribunal under rule 7(3) of the FTT Rules.

16. In relation to the first issue, Mr Ritblat's solicitors contend that the General Stay only applied to extend the time limits in "current proceedings" and that the proceedings had come to an end on 21 February when the FTT released the decision directing HMRC to issue the closure notices. They submit that the "the issue of closure notices is something done separately and independently by HMRC and is outside the scope of proceedings before the FTT". In their letter of 21 August, Mr Ritblat's solicitors argue that the FTT does not have jurisdiction to deal with HMRC's application of the same date because the proceedings had been finally disposed of and rule 6(2) of the FTT Rules does not allow for directions to be made once proceedings have concluded.

17. HMRC contend that, in the context of a direction for HMRC to close their open enquiries, the period for compliance with those directions falls within the definition of "proceedings" for the purposes of the rules. In the context of a successful closure notice application by a taxpayer, HMRC submit that a sensible end point for proceedings might be construed as the point at which HMRC issue the closure notices directed by the Tribunal.

18. In his email of 5 August, Judge Kempster observed that if, as Mr Ritblat's solicitors argued, there were no proceedings in the FTT then it was not clear that the FTT had any jurisdiction in relation to their application for a decision on whether the General Stay applied. It seems to me that Judge Kempster's point must be correct: if Mr Ritblat's solicitors are right then the FTT has no jurisdiction and Mr Ritblat must look elsewhere for a decision on whether the General Stay extended the time for issuing the closure notices in this case.

19. Judge Kempster also stated that the decision of 21 February was intended to be a decision that finally disposed of all issues in the proceedings as per Rule 35 of the FTT Rules. Rule 35(2) provides that, where (subject to irrelevant exceptions) it has made a decision which finally disposes of all issues in proceedings, the FTT must provide each party with a decision notice within 28 days or as soon as practicable thereafter.

20. I do not believe that, in his email of 5 August, Judge Kempster meant to suggest that the issue of a decision that finally disposed of all issues in the proceedings brought the proceedings and the FTT's jurisdiction to an end (although it might well be the beginning of the end). Often, there will be further matters which must be resolved by the FTT after the issue of the final decision.

21. Although rule 1(2) of the FTT Rules provides that the "[t]hese Rules apply to proceedings before the Tax Chamber of the First-tier Tribunal", that does not mean, in my opinion, that the FTT Rules do not continue to apply after the proceedings have ended (see rule 17). It is clear from rules 10 (costs), 38 (set aside) and 39 (permission to appeal) that the FTT retains jurisdiction in relation to applications under those rules after the issue of a decision that finally disposed of all issues in the proceedings. None of those applications constitute new proceedings which are started by a notice of appeal or originating application or reference (see rules 20 and 21 FTT Rules). Where applications are made after a decision

disposing of all issues in the proceedings has been issued that relate to the proceedings then and to that extent those proceedings continue until those applications have been determined or withdrawn. In my view, the same analysis applies to the closure applications in this case and the FTT continued to have jurisdiction to issue directions, including jurisdiction to extend a time limit.

22. Further, it is simply not correct to say, as Mr Ritblat's solicitors do, that rule 6(2) of the FTT Rules does not allow for directions to be made once proceedings have concluded. Rule 6 of the FTT Rules relevantly provides:

“(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made -

(a) by sending or delivering a written application to the Tribunal; or

(b) orally during the course of a hearing.

...

(5) If a party or other person ... wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.”

23. Rule 6(2) of the FTT Rules is silent on when an application can and cannot be made. Rule 6(5) is reflected in the final paragraph of the General Stay which stated that any party to proceedings could apply for the General Stay to be amended, suspended or set aside or for further directions in relation to the proceedings. It is clear from rule 6(5) and the last paragraph of the General Stay that one way to challenge a direction, such as the General Stay, is to apply to the FTT for another direction which modifies or disapplies the earlier one. Mr Ritblat's solicitors did not do this but chose to argue that the General Stay did not apply in this case. There is nothing in the FTT Rules which prevents the FTT from making a direction in relation to an obligation after the time for complying with that obligation has passed (although there would have to be good reasons for so doing).

24. For those reasons, I do not consider that the proceedings in this case had ended when Judge Kempster issued his decision with its direction that HMRC should issue the closure notices by 21 August. The proceedings were “current proceedings” within the scope of the General Stay and there was nothing to prevent the FTT issuing a direction in this case extending the time limit for complying with the earlier direction which had yet to be performed. HMRC were correct to state that the date by which they were required to issue the closure notices was extended to 18 September. HMRC complied with the extended deadline and thus no question of any failure to comply or contempt arises. Accordingly, there is no need to consider HMRC's application of 21 August for an extension of time or Mr Ritblat's application for the matter to be referred to the Upper Tribunal.

25. I make two final observations. First, Mr Ritblat's solicitors have never addressed Judge Kempster's point that, if they were right and the proceedings had ended when he issued his decision on 21 February, it must follow that the FTT had no jurisdiction to deal with Mr Ritblat's applications for a decision on the effect of the General Stay or to refer the matter to the Upper Tribunal. As already referred to, I consider that the FTT retains jurisdiction over proceedings that were before it even after they have ended. For example, where the proceedings have been brought to an end by a notice of withdrawal under rule 17(2) FTT Rules, the FTT retains some jurisdiction to reinstate the case under rule 17(3) or award costs under rule 10(4). However, if Mr Ritblat's solicitors are right then it follows that their

applications must be refused for want of jurisdiction and Mr Ritblat must seek a remedy elsewhere.

26. Secondly, I consider that Mr Ritblat's application under rule 7(2)(e) of the FTT Rules for the FTT to refer the matter to the Upper Tribunal under rule 7(3) was misconceived. Only failures to comply with requirements by the FTT listed in rule 7(3) can be referred to the Upper Tribunal. Those requirements are:

- “(a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness
- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).”

27. It is clear that the requirements specified in rule 7(3) all relate to directions made by the FTT in relation to the giving and production of evidence. In my view, the requirement to produce a document referred to in rule 7(3)(e) should be interpreted in that context. Closure notices are not evidence in these proceedings. Accordingly, the FTT has no power to refer a failure by HMRC to comply with a direction to issue a closure notice to the Upper Tribunal. In relation to such a failure, again, Mr Ritblat must seek a remedy elsewhere.

#### **DISPOSITION**

28. For the reasons given above, I have concluded that HMRC's application of 21 August to extend the time limit for issuing the closure notices was unnecessary and Mr Ritblat's application for the matter to be referred to the Upper Tribunal must be dismissed.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

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.

**JUDGE GREG SINFIELD  
CHAMBER PRESIDENT**

**Release date: 06 November 2020**