



TC08017

Appeal against interest for late payment of SDLT – appeal struck out on the basis that the Tribunal has no jurisdiction – Finance Act 2003 ss 87 & 91 and Schedule 10 para 35 & Schedule 12 – HMRC v Hok Ltd considered

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/03854

BETWEEN

JAMES SINGER

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE KEVIN POOLE

The Tribunal struck out the appeal under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 without a hearing (pursuant to the provisions of Rule 29(3) of those Rules) having first read the Notice of Appeal dated 30 October 2020, the Tribunal's Directions dated 30 November 2020 and the Appellant's representations received on 27 January 2021.

DECISION

INTRODUCTION

1. This decision concerns the striking out of the appeal on the basis that the Tribunal has no jurisdiction because the appeal relates solely to interest on SDLT paid after the statutory due date.

THE FACTS

2. The Tribunal received notice of an appeal dated 30 October 2020 from the Appellant, in which he introduced his grounds of appeal by saying “This document is an appeal against the interest charges for the reasons specified below”.

3. The essence of his appeal was that the Appellant and his wife had sought to use an avoidance scheme to eliminate their SDLT liability on the purchase of a house in 2011; HMRC had opened an enquiry into their SDLT return in 2011, then done nothing for nearly 8 years. They then closed their enquiry in July 2019, and after going through an appeals process with HMRC, the Appellant and his wife ultimately paid the SDLT claimed by HMRC in October 2020. HMRC then issued a notification to him and his wife requiring them to pay interest totalling £31,824.97 in respect of the delay in payment of the SDLT from the original purchase up to October 2020.

4. It was therefore apparent that the Appellant was seeking to appeal solely against the liability to pay interest, having paid the SDLT claimed by HMRC.

5. It appeared to me that the Appellant was seeking to notify an appeal to the Tribunal in respect of a matter in which it had no jurisdiction and accordingly I gave instructions for the issue of the following Directions:

I have considered the Notice of Appeal submitted on 30 October 2020. It is apparent that the Appellant seeks to appeal to the Tribunal purely in respect of the imposition of interest for delayed payment of SDLT originally due in 2011 which was not paid until October 2020.

Whilst I have some sympathy with the Appellant’s points, I do not consider the Tribunal has been invested by Parliament with the power to consider his appeal. The normal avenue for disputing interest charges in situations such as this is to invoke HMRC’s formal complaints process, escalating as necessary.

As a creature of statute, the Tribunal has only that jurisdiction which Parliament has conferred upon it. In respect of SDLT that jurisdiction extends only to deciding whether or not an SDLT liability (and any associated statutory penalties) sought to be imposed by HMRC is/are properly due.

As with other taxes, any interest liability for late payment of SDLT follows as a mathematical calculation based on the statutory interest rate from time to time, the amount due and the period of time between the due date and the date of actual payment; that calculation is not, to my knowledge, appealable to the Tribunal. If a taxpayer can show that the interest has been incorrectly calculated then he/she may have a defence, to the extent of the error, in enforcement proceedings brought before the Courts by HMRC to recover payment of the interest. That, however, is a matter falling outside the scope of the Tribunal’s jurisdiction.

I therefore consider the Tribunal does not have jurisdiction to entertain the Appellant’s appeal, which it is therefore obliged to strike out under its own

procedure rules. Under those rules, it must give the Appellant an opportunity to make representations before doing so, however.

I therefore consider it appropriate to make the following Directions.

DIRECTIONS

IT IS DIRECTED that

1. Unless the Appellant delivers to the Tribunal, within 28 days, written submissions in support of his argument that the Tribunal does in fact have jurisdiction to consider his appeal, then these proceedings **SHALL, AUTOMATICALLY AND WITHOUT FURTHER ORDER, BE STRUCK OUT.**
2. If the Appellant delivers any such submissions, they will be considered on their merits.
3. Until either (a) the appeal is struck out pursuant to Direction 1 above or (b) the Tribunal issues further Directions following the receipt of submissions pursuant to Direction 2 above, all other steps in the proceedings are hereby **STAYED.**
4. Any party may apply for these Directions to be amended, suspended or set aside or for further Directions.
6. Directions in the above terms were issued to the parties on 30 November 2020.
7. On 9 December 2020 the Appellant requested an extension of time to respond to the Directions issued on 30 November. The requested extension was granted and on 27 January 2021 the Appellant's representations were received.
8. The Appellant's representations were not lengthy and it is easiest to set them out in full:

I write further to your decision of 30 November 2020 stating that the First Tier Tribunal Tax Chamber ("Tribunal") does not have jurisdiction to hear my appeal against HMRC's imposition of interest of £31,824.97 in relation to a SDLT liability of £120,000 (now settled).

My Appeal brief (attached again for convenience) sets out a summary of the history.

I appreciate the sympathy offered but this letter sets out my submissions as to why I believe sympathy is not needed and the Tribunal is able to accept jurisdiction.

1. Relevant Legislation and Rules

I understand that the jurisdiction conferred by Parliament is articulated in various pieces of legislation and devolved rules. Principally the 2007 Tribunals, Courts and Enforcement Act and various pieces of subsidiary legislation. The 2009 Tax Chamber Rules Statutory Instrument and the First-tier Tribunal (Tax Chamber) Rules of July 2020 which attempt to consolidate relevant legislation.

It is worth noting that:

- Clause 2 requires Tribunals to abide by the overriding objective of dealing fairly and justly.
- Clause 2 (b) requires Tribunals to avoid unnecessary formality and to seek flexibility.

- Clause 3 states Tribunals must seek to give effect to the overriding objectives when exercising powers under these Rules or interpreting rules.
- Clause 5 allows the Tribunal to regulate its own procedures

There are further provisions requiring the Tribunal to keep proportionality in mind and ensure parties can participate.

Therefore, in considering the various arguments below, it is relevant to note that the Tribunal must keep in mind the importance of treating me (and HMRC) fairly and justly. The Tribunal must not hide behind formality and narrow interpretations but must, critically, be flexible.

Further I suggest that refusing jurisdiction, offends the avowed aims of the Tax Tribunal system for fairness and justice to be achieved. One of the Tribunal's key roles is to protect British citizens from arbitrary and unjust behaviour of government through the officers of Her Majesty's Revenue and Commissioners. The fundamental rights to independent and transparent justice simply don't work if HMRC can make a decision which is only appealed to its own complaints system. That is the normal avenue you refer to, which I have gone down. Not surprisingly, HMRC's own complaints process did not uphold my complaint. If the independent Tax Tribunal set up to hear tax disputes will not hear a dispute with HMRC for applying over 25% of interest on tax, I don't believe it is fulfilling its mandate from Parliament or the general provisions of the various Tax Acts.

2. SDLT associated statutory penalties

In your decision you state that the Tribunal only has jurisdiction to decide on SDLT liabilities (and any associated statutory penalties) emphasis added. The rate of interest is a statutory penalty directly associated with the SDLT tax. The rate of interest is of course significantly in excess of the LIBOR or Bank of England rate over the period and is imposed by statute as a penalty. As Ms Green has been at pains to argue, repeatedly, it is designed to ensure I am not advantaged by using a legitimate scheme which subsequently failed. In short to penalise. The interest is, in fact, the only penalty for those such as myself that have not been involved in any egregious or incorrect behaviour deserving of fines. It therefore serves the legitimate goal of ensuring people such as me suffer some form of penalty. Hence as an associated statutory penalty, regardless of the broad discretions required at 1 above, I believe you have jurisdiction.

In conclusion how can interest of over 25% of the sum it relates to be anything other than a penalty?

3. The definition of tax

The Tribunal is tasked with hearing tax disputes. Applying the requirements of flexibility etc referred to above, surely the penalty interest charged by HMRC on its tax bills must fall within the general definition of tax and the remit for hearing tax disputes. The interest is directly related to the tax due, the rate of interest is determined by HMRC, as we see in my extreme case, the amount of time interest is charged is determined by HMRC and the interest is charged and collected with the primary tax by HMRC. This quite simply is a tax dispute for which the Taxes Management Act of 1970 tasked tax tribunals with hearing.

4. Overriding objectives of fairness and justice

I filed my SDLT return in October 2011 clearly declaring why I did not believe SDLT was payable and disclosing the details of the property purchase. I received a letter saying HMRC would investigate in December 2011 and nothing further for over eight years until a letter in July 2019. It wasn't hard to communicate with me, I was in the same house over which the dispute arose for the entire period. On any reasonable view this is an unacceptable lack of transparency, information and an unconscionable delay. However, despite HMRC's apologies for the way they have handled this case they are profiting from their incompetence and penalising me for the same. That is unfair and unjust. If the Tax Tribunal does not have jurisdiction to hear disputes over the tax authorities' imposition of unfair interest penalties in such manner who does? What is to say that with COVID, BREXIT and the like they have excuses for even worse prosecution of investigations. On these facts HMRC are, perversely, incentivised to perform worse and charge more penalty interest with no independent oversight.

Surely, interpreting the Rules "formally" to avoid hearing this case would offend at least two of the overriding principles in the Tax Rules.

For all of the reasons above I do believe the Tribunal has discretion to accept jurisdiction.

If for any reason, and in the alternate, the Tribunal does not accept jurisdiction, I submit that HMRC should ask the Tribunal to accept jurisdiction to hear this dispute as the most appropriate forum to resolve this.

Finally, I should add that I have made it clear to HMRC and Ms Green in particular that I don't believe I should be advantaged by this process. I accept a reasonable amount of interest should be payable but that should be calculated on the basis of the investigation being conducted in a fair, professional and prompt manner. Not exceeding, by way of example, two years. Ms Green has steadfastly refused to accommodate that position and maintains that HMRC should be fully rewarded for its incompetence.

Therefore, on the basis of the above I respectfully ask you to hear my appeal.

9. I did not consider it necessary to seek HMRC's representations on the matter.

THE LAW

10. The obligation to pay interest on late payment of SDLT arose under s 87 Finance Act 2003 ("FA03"), which provides, so far as relevant, as follows:

(1) Interest is payable on the amount of any unpaid tax from the end of the period of 30 days after the relevant date until the tax is paid.

...

(3) For the purposes of this section, "the relevant date" is –

...

(c) in any other case, the effective date of the transaction.

...

(7) Interest is calculated at the rate applicable under section 178 of the Finance Act 1989 (c 26) (power of Treasury to prescribe rates of interest).

11. By virtue of s 91 FA03, the provisions of Schedule 12 to that Act apply in relation to the recovery of unpaid interest "as if it were an amount of unpaid tax". That Schedule gives various methods of recovery, including by action for debt in the Courts.

12. There are numerous explicit provisions in the tax code under which rights of appeal are conferred in respect of decisions taken by HMRC. In relation to SDLT, those provisions are contained in Part 7 of Schedule 10 FA03. The list of matters in respect of which appeals may be brought are set out in para 35:

- (1) An appeal may be brought against –
 - (a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),
 - (b) a conclusion stated or amendment made by a closure notice,
 - (c) a discovery assessment,
 - (d) an assessment under paragraph 29 (assessment to recover excessive repayment), or
 - (e) a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).

13. In respect of penalties, there are separate statutory rights of appeal, specific to the penalties imposed. No statutory right of appeal is conferred, either in s 91 or in any other place, in respect of the calculation or enforcement of a liability to interest.

14. In common with other direct taxes, appeals must be notified first to HMRC, and may subsequently be notified to the Tribunal. If that happens, the Tribunal is required to decide the matter in respect of which a valid appeal has previously been notified to HMRC.

THE APPELLANT’S ARGUMENTS

15. The Appellant points first to the provisions in the Tribunal’s procedure rules which require it to act in certain ways when dealing with cases. It is argued that the Tribunal “must not hide behind formality and narrow interpretations but must, critically, be flexible”. It is said that the Tribunal must treat the Appellant “fairly and justly”, and that if the Tribunal does not assume jurisdiction over such matters, the citizen will be left “unprotected from arbitrary and unjust behaviour of government dealt out through HMRC officers”. He points out that recourse to HMRC’s own complaints process does not appear to offer “independent and transparent justice”. In short, if the Tribunal does not hear his appeal, it is not “fulfilling its mandate from Parliament or the general provisions of the various Tax Acts.”

16. The Appellant then argues that the interest in issue in the present case, due its large amount, is nothing less than a statutory penalty, in respect of which the Tribunal’s jurisdiction is therefore engaged.

17. The Appellant then argues that the Tribunal is tasked by the Taxes Management Act 1970 with hearing tax disputes, which description applies to the dispute over interest in this case.

18. Finally, the Appellant argues that it is “unfair and unjust” for HMRC to “profit from their incompetence” by penalising the Appellant for the delay which they have caused.

DISCUSSION AND DECISION

19. It is clear that the Tribunal has no general inherent jurisdiction. It is a creature of statute, which only has the powers which Parliament has sought fit to confer on it. It was brought into existence by s 3(1) of the Tribunals, Courts and Enforcement Act 2007 “for the purposes of exercising the functions conferred on it under or by virtue of this Act or any other Act.” In other words, as was said in the decision of the Upper Tribunal in *HMRC v Hok Limited* [2012] UKUT 363 (TCC) at [36], the jurisdiction of the Tribunal is “derived wholly from statute”.

20. In order to invoke the Tribunal’s jurisdiction, therefore, it is necessary to find a statutory right of appeal in respect of the matter in issue. The list of matters in respect of SDLT in relation to which an appeal may be brought which is set out above is an exhaustive one. It does not extend to interest. As the mechanism for imposing a liability to interest does not fall within any of the descriptions set out in sub-paragraphs (1)(a) to (e) of paragraph 35, nor is any machinery laid down for an appeal in respect of a liability to interest, it follows that there is no statutory right of appeal to HMRC (nor, therefore, to the Tribunal).

21. This does not mean that HMRC can impose whatever interest they like. The period for which interest is charged and the rate at which it is to be charged are set out in (or by reference to) FA03. Parliament has set down the period over which interest is chargeable and the rate at which is calculated; HMRC can only charge interest in accordance with the statutory formula. If they seek to overcharge, the remedy lies not in an appeal to this Tribunal, but by way of defence in the Courts to enforcement action taken by HMRC when seeking to recover the interest they have calculated as being liable.

22. I do not consider that the size of the interest liability in the present case converts it, as the Appellant argues, into a penalty. The large amount of interest is simply a function of the amount of the original SDLT liability and the lengthy period it was outstanding for. The Appellant argues that it would never have been allowed to reach such a level if HMRC had acted promptly, but this is effectively to argue that the Tribunal has a general supervisory jurisdiction over HMRC’s actions which goes beyond any specific statutory rights of appeal.

23. The Appellant also refers to what he characterises as a general jurisdiction conferred upon it by reason of being a “tax dispute for which the Taxes Management Act of 1970 tasked tax tribunals with hearing.” This misses the point, in that the Taxes Management Act does confer various rights of appeal, but they are all specific rights in respect of particular liabilities or other disputes. There is no “catch all” provision to be found in that Act which confers any wider and more general jurisdiction of the type which the Appellant seeks.

24. As to the arguments based on the Tribunal’s procedure rules, it is true that they lay down various general obligations of the type referred to by the Appellant in his arguments, but those obligations (to deal with cases fairly and justly and so on) apply in relation to how the Tribunal deals with the cases under its jurisdiction, they cannot be regarded as extending that jurisdiction to cover matters which Parliament has chosen not to bring within the Tribunal’s jurisdiction. Nor, as has been made clear by the Upper Tribunal in *Hok*, does the Tribunal have a general power to override statutory provisions on the basis that their operation in any particular case is perceived to be unfair or unreasonable:

Once it is accepted, as for the reasons we have given it must be, that the First-tier Tribunal has only that jurisdiction which has been conferred on it by statute, and can go no further, it does not matter whether the Tribunal purports to exercise a judicial review function or instead claims to be applying common law principles; neither course is within its jurisdiction. As we explain at paras 36 and 43 above, the Act gave a restricted judicial review function to the Upper Tribunal, but limited the First-tier Tribunal’s jurisdiction to those functions conferred on it by statute. It is impossible to read the legislation in a way which extends its jurisdiction to include—whatever one chooses to call it—a power to override a statute or supervise HMRC’s conduct.

(*Hok* at [56]).

25. It follows that I can see no basis upon which the Tribunal has (or has the power to assume) jurisdiction to decide whether the disputed interest must be paid. Accordingly I am required, under Rule 8(2)(a) of the Tribunal’s procedure rules, to strike out the proceedings.

If the Appellant seeks to argue that no reasonable body of Commissioners could have sought to impose the full statutory liability in view of the overall circumstances, he must pursue that argument in the course of judicial review proceedings in the Courts.

26. These proceedings are therefore STRUCK OUT.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

27. This document contains full findings of fact and reasons for the decision to strike out the appeal. 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.

**KEVIN POOLE
TRIBUNAL JUDGE**

Release date: 03 FEBRUARY 2021