



[2022] UKFTT 00010 (TC)

**TC 08363**

*COSTS – complex track case – appeal withdrawn - ADR application – delayed application for stay – whether costs concurred in preparation of statement of case after ADR application made incurred reasonably – no – whether costs of ADR recoverable – yes – application allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/04195**

**DECISION  
ON AN APPLICATION FOR COSTS  
IN THE CASE OF**

**RUDDLE GROUP LIMITED**

**Appellant**

**-and-**

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

**Respondents**

1. This is an application for costs made by HM Revenue & Customs (**HMRC**) pursuant to rule 10(1)(c)(i) and (ii) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rule 2009 (“**FTT Rules**”).

**THE CLAIM AND ITS BASIS**

2. On 27 October 2020 Ruddle Group Limited (**the Appellant**) submitted an appeal concerning a landfill tax decision taken on 3 March 2020 and subject to a review conclusion letter dated 31 July 2020. The appeal was acknowledged and notified by the Tribunal on 8 December 2020. It was allocated to the complex category and the Appellant did not opt out of the costs regime within the 28 days prescribed in rule 10(1)(c)(ii) FTT Rules.

3. On 21 December 2020 the Appellant lodged an application with HMRC for admission to alternative dispute resolution (**ADR**). The application was made after the appeal had been made on the basis that the Appellant understood, by reference to HMRC’s guidance, that no application for ADR could be made prior to the lodging of an appeal. In fact HMRC’s guidance on this issue is contradictory: the guidance states both “you can apply for ADR at any stage of an enquiry and at any stage of the tribunal proceedings”. However, it then goes on immediately in connection with indirect tax disputes to state: You can apply for ADR when HMRC has made a decision about an indirect tax and you have either: accepted our offer of a review – you must wait for the review to end, appeal to the tribunal and have the appeal accepted before applying; or not accepted our offer of a review – you must appeal to the tribunal first and have the appeal accepted before applying”.

4. In any event, on 6 January 2021 HMRC rejected the ADR application on the basis that there had been no appeal. HMRC were provided with evidence of the appeal on 8 January 2021 and on 21 January 2021 the ADR application was accepted by HMRC.
5. It appears that the ADR team did not notify their own solicitor's office that the ADR application had been accepted with the consequence that the solicitor's office continued to incur the costs of preparing and serving a statement of case which was due to be served on 5 February 2021 but was served, following an application for a short extension, on 10 February 2021.
6. It was not until 31 March 2021 that the ADR team notified solicitor's office of the accepted application and instructed the solicitor to make an application for a stay. On 13 April 2021 the parties applied, by consent, for a stay pending the outcome of the ADR process.
7. The ADR meeting held on 15 July 2021 was unsuccessful.
8. On 3 August 2021 the Appellant withdrew its appeal.
9. HMRC have made an application for costs as required pursuant to rule 10(4) in the sum of £9328.50.
10. The Appellant objects to the application on the basis that they had to appeal in order to enter the ADR process and the appeal was made for that purpose. They did not expect costs to be incurred by HMRC until the ADR was resolved.
11. HMRC contend that all costs incurred are recoverable. They contend that neither the application for ADR nor the stay granted precluded them from progressing the appeal and that, absent the application for and granting of a stay they are entitled to the costs of preparing the statement of case.
12. HMRC's schedule of costs is not sufficiently comprehensive or detailed so as to determine whether they have claimed any costs associated with the ADR. It is implicit that no legal costs were incurred in connection with it.

#### **RIGHT TO COSTS**

13. This appeal was allocated to the complex category pursuant to rule 23 FTT Rules. As a consequence, and in view of the fact that the Appellant did not opt out of the costs' regime HMRC are entitled to an award of their reasonable costs.
14. The question to be determined is what costs were reasonably incurred.
15. HMRC reference the judgement of *Societe Anonyme Pecheries Ostendaises v Merchant's Marine Insurance Co* [1928] 1 KB 750 as supporting a contention that the effect of a stay is not to put the proceedings in abeyance. They note that it is, however, a matter for the Tribunal to determine the reasonableness of the costs having regard to the terms of the stay and all other circumstances.
16. By reference to *Grindley & Others v HMRC* [2016] UKFTT 384 (TC) HMRC contend that absent a stay they were required to comply with the direction to serve a statement of case.
17. Neither case goes to the real issue to be determined in connection with the present application. By their application and reply to the Appellant's objection, HMRC appear to premise their claim on the conduct of the Appellant in failing to apply for a stay earlier. The application also appears to fail to recognise that the claimant entitled to their costs is HMRC and not HMRC's solicitor's office.
18. HMRC's guidance on when an ADR can be applied for is confusing but by reference to the guidance and to the objection dated 6 January 2021 the Appellant was compelled to appeal

in order to enter the ADR process. The Appellant made its application on 21 December 2020 within 13 days of notification of the appeal. That application was made to HMRC (the client of solicitor's office). HMRC considered that application and on 6 January 2021 rejected it on the erroneous basis that no appeal had been bought. Had that error not occurred it is reasonable to conclude that the application would have been accepted on that date. Once the application had been accepted the HMRC client should have notified its legal advisors that, pending the outcome of that process, incurring costs in connection with the appeal was unreasonable and premature. The Tribunal process is flexible and the HMRC client recognised (by their email of 31 March 2021) that it was usual that a 150 stay would be applied for and granted to allow time for the ADR process to complete.

19. The failure of the HMRC client to notify their legal advisor that they had accepted the case into ADR renders costs incurred from 6 January 2021 as unreasonable and premature.

20. Had, or to the extent that, legal costs have been incurred in connection with the ADR process itself, as distinct from the progression of the Tribunal proceedings they are recoverable (see *Chantrey Vellacott v The Convergence Group Plc and others* [2007] EWHC 1774).

21. On the basis of the above HMRC are awarded their costs, if any, incurred in connection with the Tribunal proceedings themselves for the period from 8 December 2020 to 6 January 2021 and from 15 July 2021 through to 3 August 2021. They are also entitled to any legal costs included within the present claim which relate to the ADR process and to the costs incurred in bringing the costs application, to the extent only that they relate to the application itself and the particularisation of the costs now awarded.

22. HMRC's costs summary does not permit a summary assessment of these costs because it does not (contrary to the requirements of rule 10(3) FTT Rules) particularise the dates on which costs were incurred by solicitor's office. Counsel's fees are so particularised, but no counsel's fees were incurred in the period for which costs have been awarded and/or relating to the ADR (it would have been surprising if Counsel had attended the ADR meeting in any event).

23. The parties should now seek to agree the costs so awarded, such costs to be determined by a taxing master if they cannot be agreed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

24. 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.

**AMANDA BROWN QC**  
**TRIBUNAL JUDGE**  
**Release date: 08 DECEMBER 2021**