



Neutral Citation: [2023] UKFTT 713 (TC)

Case Number: TC 08903

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/11615

*Procedure – strike out application – whether an appeal made to HMRC – jurisdiction to hear appeal- Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) 2009*

**Heard on:** 09 June 2023

**Judgment date:** 14 August 2023

**Before**

**TRIBUNAL JUDGE MCGREGOR**

**Between**

**Mr CONSTANTIN ROTARU**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: The Appellant appeared in person

For the Respondents: Darren Bradley, litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. This is an application by the Respondents (“HMRC”) to strike out the appeal of Mr Rotaru (“the Appellant”) under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) 2009 (“the FTT Rules”) on the basis that this Tribunal does not have jurisdiction to hear the appeal.
2. I had a bundle containing 105 pages, including HMRC’s outline argument to support their application for strike out.
3. I also heard directly from Mr Rotaru.

### LAW

4. Under Rule 8 of the FTT rules, subsection (2) reads as follows:
  - (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
    - (a) does not have jurisdiction in relation to the proceedings or that part of them; and
    - (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
5. Under section 31A(1) of the Taxes Management Act 1970 (TMA 1970), notice of an appeal under section 31 of TMA 1970 must be given:
  - (1) In writing,
  - (2) Within 30 days after the specified date,
  - (3) To the relevant officer of the Board
6. Under the remainder of section 31A of TMA 1970, the specified date is identified (to the extent relevant) as the date of issue of a closure notice or assessment; and the relevant officer is identified as the officer who issued the closure notice or assessment.
7. Section 49D of the Taxes Management Act 1970 provides:
  - (1) This section applies if notice of appeal has been given to HMRC.
  - (2) The appellant may notify the appeal to the tribunal.
  - (3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question.
  - (4) Subsections (2) and (3) do not apply in a case where—
    - (a) HMRC have given a notification of their view of the matter in question under section 49B, or
    - (b) HMRC have given a notification under section 49C in relation to the matter in question.
  - (5) In a case falling within subsection (4)(a) or (b), the appellant may notify the appeal to the tribunal, but only if permitted to do so by section 49G or 49H.

### PARTIES ARGUMENTS

#### HMRC’s arguments

8. HMRC’s broad argument is that an appeal against the same tax charges and penalties has already been submitted to this Tribunal and struck out in a decision released on 24 February

2022 by Judge Brannan: *Constantin Rotaru v HMRC* [2022] UKFTT 00080. This appeal will be referred to as the February 2022 Appeal.

9. This appeal appears to be being brought against the same penalties and some of the same tax charges. This is on the basis that the amount of the penalty being appealed is £1448.67, which is identical to the sum of the penalties charged for inaccuracies in returns in relation to the tax years 2015/16 to 2018/19 in the February 2022 Appeal. The amount of income tax appealed in the February 2022 Appeal was £5,681.13 arising from discovery assessments for tax years 2015/16 to 2017/18 and a closure notice for 2018/19. The amount appealed in this appeal is £4654.86. HMRC submit that this is an appeal against part of the amounts appealed in the February 2022 Appeal.

10. The February 2022 Appeal was struck out on the grounds that Mr Rotaru had not made an appeal to HMRC in accordance with section 49D of TMA 1970 and therefore no appeal can be notified to the Tribunal.

11. In this appeal, HMRC submit that the position has not changed. Mr Rotaru has still not submitted an appeal to HMRC pursuant to section 49D of TMA 1970.

12. HMRC submit that none of the contacts that Mr Rotaru has made to HMRC in the time since the February 2022 Appeal constituted such an appeal to HMRC.

13. HMRC therefore apply for this appeal to be struck out on the grounds that the Tribunal does not have jurisdiction to consider it.

14. In the alternative, HMRC submit that if Mr Rotaru is unsatisfied with the decision in the February 2022 Appeal, he should make an application for permission to appeal against that decision, rather than start a new one.

### **Mr Rotaru's arguments**

15. Mr Rotaru sent an email to the Tribunal on 9 January 2023 following notification of HMRC's application to strike out this appeal. He stated that he objected to the application.

16. His email details the history of his interactions with HMRC as follows:

(1) He arrived in the UK in 2007 and obtained a National Insurance number and a unique taxpayer reference (UTR).

(2) He obtained construction work, which was paid under deduction of tax according to the construction industry scheme, and commenced submitting self-assessment tax returns from 2008.

(3) In 2009, he noticed that his personal data in his online tax account had been changed to that of another person. He called HMRC to notify them of this problem.

(4) In summer 2010, HMRC called him and notified him of a 3<sup>rd</sup> party data theft and that they would be changing his UTR.

(5) Mr Rotaru was suspicious of the data theft and considered that it was being done to raise fictitious liabilities. He objected to HMRC changing his UTR without having provided him any evidence of the data theft.

(6) In 2019, there was a dispute between Mr Rotaru and HMRC related to whether or not he had been employed by an umbrella company. Mr Rotaru considered that he had been scammed by the umbrella company and asked HMRC to remove their information from his online tax account.

(7) Shortly afterwards, HMRC started an investigation into Mr Rotaru's tax affairs. Mr Rotaru considered that this was ordered as a "revenge attack" due to his argument with the officer dealing with umbrella company query.

(8) Mr Rotaru submits that an HMRC officer, Officer A, sent him a letter notifying him of the commencement of an investigation but that this letter included correspondence that related to another taxpayer. Mr Rotaru considers that this was not a mistake and that it was deliberate in order to sustain HMRC's position that incorrect data that he had uncovered had all been accidents.

(9) Following this investigation, Mr Rotaru submits that Officer A issued assessments based on "fictitious outstanding liabilities" because he had turned previous self-employments into employments.

(10) He submits that he has "exhausted all means of litigation with the HMRC" and attaches the letter dated 12 December 2022 from HMRC's complaints investigation senior lead. This letter explains that HMRC had conducted their two-tier complaints process and had concluded that in April 2022 and therefore was nothing further that could be done within the HMRC internal complaints process. It also highlighted the possibility of contacting the Adjudicator.

17. In the notice of appeal submitted on 21 June 2022, Mr Rotaru sets out under "grounds for appeal" that his UTR has been changed without any reasonable explanation or evidence from HMRC. It also claims that the current financial liabilities on this tax records stem from HMRC's freedom to alter tax records and to obstruct past and future attempts to challenge matters in order to enable fraud to be committed by tax officials without scrutiny.

18. In response to the question about the reasons for making his appeal late, Mr Rotaru states that he isn't sure if his appeal is late but again refers to HMRC's failure to provide evidence of the tax owed and that HMRC have refused to properly investigate his complaints.

19. In the box headed "desired outcome", Mr Rotaru refers to wanting HMRC to provide him with actual evidence of his previous UTR being compromised and that he owes them money in unpaid or overclaimed tax.

20. At the Tribunal hearing, Mr Rotaru re-iterated a number of these points, focusing particularly on:

- (1) HMRC being the perpetrator of fraud against him and others;
- (2) He had no options to raise it further with HMRC because all avenues claimed that they could not do anything or refused to correspond with him;
- (3) That the original strike out was based on perjury from the HMRC officer concerned;
- (4) That Officer A, who raised the assessments, is being protected by other HMRC staff and that everyone who he deals with keeps "vanishing";
- (5) That he is unable to send any correspondence to HMRC via email because he has been blocked.

#### **BACKGROUND FACTS AND PROCEDURAL HISTORY**

21. I find the following background facts. Further facts, on which there was substantial contention, are found in the discussion below.

22. Mr Rotaru submitted a notice of appeal to the Tribunal on 21 June 2022. This notice stated that it was an appeal regarding income tax. It then stated that the amount of tax was

£4654.86 and the penalty was £1448.67. No letters or assessments were attached to the Notice of Appeal.

23. At the hearing, Mr Rotaru confirmed that the income tax matters referred to were the same as those dealt with in the February 2022 Appeal.

24. No explanation was given for the difference in amounts of tax between this appeal and the February 2022 appeal. However, for the purposes of hearing this application for strike out, I am confident that this appeal relates to the same assessments for income tax and penalties as were dealt with in the February 2022 Appeal.

25. I therefore adopt the background facts set out in paragraphs 4 to 21 of that decision.

26. Since that decision, Mr Rotaru has made a number of complaints to HMRC, relating to HMRC's conduct but not specifically concerning any issues within the income tax assessments and penalties under appeal.

27. On 14 October 2022, Mr Bradley send a letter to Mr Rotaru via email. In that letter, he explained to Mr Rotaru that section 31A of TMA 1970 requires an appeal to be made to the relevant officer. The letter identified Officer A specifically and requested that Mr Rotaru write to him in order to appeal the matter. It went on to provide Officer A's email address for that purpose and explained that grounds of appeal for the specific substantive matter he wished to appeal would need to be included.

28. On 9 November 2022, Mr Rotaru called Mr Bradley to discuss the appeal. Mr Bradley's notes of the call were included in the bundle. They stated that Mr Rotaru had insisted that this was a different appeal to the previous appeal because it had a different appeal number. Mr Bradley explained that it appeared to relate to the same underlying decisions and that no appeal had yet been received by HMRC. Mr Rotaru went on to make a series of complaints regarding the February 2022 appeal. He reiterated that HMRC had no proof of the debt he is said to owe. Mr Bradley stated on the call that due to Mr Rotaru's previous history and attitude on the telephone, Mr Bradley would only correspond with Mr Rotaru by email or letter.

29. Mr Rotaru's recollection of this conversation, explained at the hearing, was that Mr Bradley had stated that he would not deal with Mr Rotaru at all and told Mr Rotaru not to contact him again.

30. I find as a fact, that Mr Bradley did not refuse to deal with Mr Rotaru at all, but rather instructed Mr Rotaru that from that time on, he would only deal with him in written form.

31. On 24 and 25 November 2022, Mr Rotaru made 4 online complaints using a web-form. They all related to the same issues detailed above.

32. I find as a fact that none of these complaints could be interpreted as being an appeal made to the relevant officer for the purposes of section 31A of TMA 1970.

33. Between 19 December and 1 February, Mr Rotaru used a different online form to change his personal details, such as name and address on 5 separate occasions. On each occasion, he purported to change either his name or address, or both, to something with offensive language and referring to HMRC being a scam and/or a fraud.

#### **DISCUSSION**

34. The legal scope of this decision is extremely narrow. I have to decide if Mr Rotaru has made an appeal within the scope of section 31A of TMA 1970.

35. In accordance with section 49D of TMA 1970, if no section 31A appeal has been made, no appeal can be made to this Tribunal. I would therefore be bound, by rule 8(2) of the Tribunal

procedure rules to strike out the appeal on the grounds of lack of jurisdiction. I note that rule 8(2) is drafted in mandatory terms “must” strike out.

36. The full text of section 31A of TMA 1970 is set out above, but the effect from Mr Rotaru’s perspective is that, if he wishes to challenge the substance of the tax charges and penalties raised, he must do so by submitting an appeal in writing to Officer A, being the officer in question. That appeal has a deadline of 30 days from the date the assessments were issued. However, there is provision to allow for a late appeal to be made in certain circumstances.

37. As I have found above, none of the correspondence contained within the bundle amounts to such an appeal.

38. Therefore, I need to decide whether Mr Rotaru has made such an appeal that was not included in the bundle.

39. In his initial response to my question at the hearing as to whether he had made an appeal to Officer A, Mr Rotaru referred back to a telephone call he made in 2019, which is before the assessments were raised.

40. When pressed about the period after the assessments being raised, Mr Rotaru stated that he had appealed against the tax assessments and that he had done so by email to Officer A.

41. When asked for evidence of these appeals, such as copies of the emails, he objected to being asked to provide evidence. He stated that he was not the defendant in these appeals and therefore was not obliged to provide evidence.

42. He also stated that the emails bounced back because he had been blocked from contacting Officer A. He was unable or unwilling to provide evidence of the email bounce-backs that he said he received for the same reasons regarding not having to give evidence.

43. HMRC submitted that they had no record of any emails to Officer A that amounted to an appeal and that Mr Rotaru had not been blocked from contacting Officer A or any other officer by email.

44. With regards to the question of evidence, Mr Rotaru objected to being treated as “the defendant” in his own appeal and for being asked if he had any evidence to show that he had made the appeal to Officer A.

45. This turns on the question of burden of proof. Within the substantive appeal, if I decide it can proceed, Mr Rotaru would be bringing an appeal against assessments raised by HMRC. HMRC has investigated his affairs and decided that an amount of tax and penalty is due. Unless Mr Rotaru challenges those amounts by way of an appeal, they become due and payable to HMRC. It is not a question of being treated as a “defendant”. Mr Rotaru is seeking to challenge the assessments.

46. In this application, we are not dealing with the substantive question, but rather with whether or not this Tribunal has jurisdiction to hear the appeal in the first place. HMRC has made the application to strike out, which means that the burden is on HMRC to show that the Tribunal does not have jurisdiction.

47. Under the Rule 8(4) of the Tribunal Procedure Rules, I must not strike out Mr Rotaru’s case without first giving him the opportunity to make representations in relation to the proposed striking out. Mr Rotaru has had that opportunity in writing, when he made a written response to HMRC’s application and orally at the hearing. This opportunity does not make Mr Rotaru the “defendant” in his own appeal. However, when the prospect of their appeal being struck out is facing a taxpayer, most taxpayers choose to present evidence that counters the position being presented by HMRC.

48. As I have noted above, the question of jurisdiction in these circumstances turns entirely on the narrow point of whether an appeal has been made to Officer A, which is a question of fact.

49. HMRC's position is that none of the correspondence they have received is an appeal against the assessments. HMRC have included all of the correspondence they have on record since the February 2022 appeal (since all the correspondence prior to that is dealt with by the February 2022 appeal). I have already found that none of these pieces of correspondence constitute an appeal to Officer A.

50. In light of Mr Rotaru's decision not to submit any written evidence, such as bounce back emails or sent emails, which would support his oral evidence that he attempted to make an appeal to Officer A by email, I have to decide whether such an appeal was made based on the oral evidence alone.

51. I find that it was not. Mr reasons are as follows:

(1) Mr Rotaru understood that an appeal needed to be made to Officer A in writing before this Tribunal can entertain an appeal. This had been set out in clear detail in the decision on the February 2022 Appeal and by Mr Bradley in his letter in October 2022. When I attempted to explain the principle at the hearing in order to satisfy myself that Mr Rotaru understood the law that he needed to comply with, Mr Rotaru objected, complaining that I was being patronising and said that I did not need to explain the law to him. I therefore find that he understood the law and its effect fully;

(2) Despite this, Mr Rotaru did not refer to having made an appeal by email until I asked him the direct question for a second time during the hearing. No reference was made in the Notice of Appeal; in his response to the strike out application; or in his submissions at the hearing;

(3) I was therefore not convinced that such an email had ever been sent;

(4) However, even if Mr Rotaru had made such an appeal by email, he stated that they bounced back because the email address had been blocked. If that had been the case, he would therefore have been fully aware that the email had failed to deliver. In such circumstances, he cannot have been under the impression that an appeal had in fact been made. Sending an email that you know for certain has not been received cannot constitute making an appeal in writing to the relevant officer within the scope of section 31A of TMA 1970. The reasonable response to a failed email would have been to have forwarded the email to another person with whom he was corresponding at HMRC explaining the circumstances or to have sent it by post. He did not take any of those steps.

52. I therefore decide that this appeal should be struck out under Rule 8(2)(a) because the Tribunal does not have jurisdiction to hear the appeal.

53. For the sake of completeness, I note that the process of making an appeal to this Tribunal is in no way connected to the internal complaints process which Mr Rotaru undertook, nor is it connected with any issues raised to the adjudicator. The existence of such complaints has no bearing on this decision.

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

54. 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.

**ABIGAIL MCGREGOR  
TRIBUNAL JUDGE**

**Release date: 14 August 2023**