[2012] UKUT 184 (TCC)
Appeal number: FTC/80/2011

INCOME TAX – determination under s 28C TMA 1970 – whether right of appeal to the First-tier Tribunal against such a determination – appeal struck out by First-tier Tribunal on grounds that no such right – whether strike-out decision correct – construction and effect of s 197 FA 1994 – whether TMA 1970 forms part of "the Tax Acts" – no – held no such right of appeal – appeal from First-tier Tribunal against striking out dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

MICHAEL BARTRAM **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN CLARK

Sitting in public at 45 Bedford Square WC1A 3DN on 26 March 2012

The Appellant in person

Michelle Turkie, Legal Officer, HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant, Mr Bartram, appeals against a decision on a preliminary issue by the First-tier Tribunal ("FTT") to strike out Mr Bartram's appeal pursuant to Rule 8(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, SI 2009/273 (L.1), ("the FTT Rules") on the grounds that no appeal against a determination under s 28C of the Taxes Management Act 1970 ("TMA 1970") could be made to the FTT. The decision of the FTT (Judge Charles Hellier and Nigel Collard) released on 14 July 2011 was published under the reference [2011] UKFTT 471 (TC), and numbered TC01321.

The background

2. As the FTT decided to strike out Mr Bartram's appeal, it made no formal findings of fact. However, it stated the background circumstances.

3. As I explained to Mr Bartram at the hearing, the only matter open for me to consider is whether the FTT's decision to strike out the appeal was correct as a matter of law. This meant that I am precluded from considering matters of fact going beyond those referred to by the FTT. I am therefore unable to take into consideration the factual history of the matter as set out in a note from Mr Bartram dated 7 February 2012, although I comment below on one matter raised in that note.

4. However, the issue for me to consider is a narrow one; it is whether an appeal can be made to the FTT against a "determination" made by HMRC under s 28C TMA 1970 against a taxpayer in circumstances where the taxpayer has not made a self assessment return. For this purpose, the only information that I need to consider is that the determinations have been made; I do not need to consider the circumstances leading to the making of those determinations.

5. It is common ground as between the parties that the Respondents ("HMRC") made determinations under s 28C TMA 1970 against Mr Bartram for the years to 5 April 2006, 2007 and 2008.

6. Mr Bartram's Notice of Appeal to the FTT was dated 4 October 2010. The FTT hearing to determine the preliminary issue was on 19 April 2011. The decision referred to above contained the full facts and findings; it is not clear whether any shorter form of decision was previously issued.

The law

7. Rule 8 (2) (a) of the FTT Rules provides:

> "(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."

8. Section 28C TMA 1970 states:

"**28C Determination of tax where no return delivered**

(1) This section applies where—

(a) a notice has been given to any person under section 8 or 8A of this Act (the relevant section), and

(b) the required return is not delivered on or before the filing date.

(1A) An officer of the Board may make a determination of the following amounts, to the best of his information and belief, namely—

(a) the amounts in which the person who should have made the return is chargeable to income tax and capital gains tax for the year of assessment; and

(b) the amount which is payable by him by way of income tax for that year;

and subsection (1AA) of section 8 or, as the case may be, section 8A of this Act applies for the purposes of this subsection as it applies for the purposes of subsection (1) of that section.

(2) Notice of any determination under this section shall be served on the person in respect of whom it is made and shall state the date on which it is issued.

(3) Until such time (if any) as it is superseded by a self-assessment made under section 9 … of this Act (whether by the taxpayer or an officer of the Board) on the basis of information contained in a return under the relevant section, a determination under this section shall have effect for the purposes of Parts VA, VI, IX and XI of this Act as if it were such a self-assessment.

. . ."

9. Section 31(1) TMA 1970 provides:

"**31 Appeals: right of appeal**

(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."

10. Section 197 of the Finance Act 1994 ("FA 1994"), which inserted s 28C into TMA 1970, is as follows:

"1**97 Construction of certain references**

(1) In the Tax Acts and the Gains Tax Acts, any reference (however expressed) to a person being assessed to tax, or being charged to tax by an assessment, shall be construed as including a reference to his being so assessed, or being so charged—

(a) by a self-assessment under section 9 or 11AA of the Management Act, or

(b) by a determination under section 28C, 28D or 28E of that Act (which, until superseded by such a self-assessment, has effect as if it were one).

(2) In this section "the Gains Tax Acts" means the Taxation of Chargeable Gains Act 1992 and all other enactments relating to capital gains tax."

11. Section 831(1)(b) of the Income and Corporation Taxes Act 1988 ("ICTA 1988") contains the definition of the "Income Tax Acts":

"(1) In this Act, except so far as the context otherwise requires—

(a) . . .

(b) "the Income Tax Acts" means the enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax."

12. Section 831(2) ICTA 1988 sets out the definition of the "Tax Acts":

"(2) In this Act "the Tax Acts", except so far as the context otherwise requires, means this Act and all other provisions of the Income Tax Acts and the Corporation Tax Acts."

13. Section 118(1) TMA 1970 includes the definition of "the Taxes Acts":

"(1) In this Act, unless the context otherwise requires—

. . .

"the Taxes Acts" means this Act and—

(a) the Tax Acts,

(b) the Taxation of Chargeable Gains Act 1992 and all other enactments relating to capital gains tax . . ."

14. Section 199 FA 1994 contains a definition of "the Management Act":

"**199 Interpretation and commencement of Chapter III**

(1) In this Chapter "the Management Act" means the Taxes Management Act 1970."

Mr Bartram's arguments

15. Mr Bartram explained that his accountants, Clarke & Co, were no longer acting for him. He acknowledged that he did not have sufficient technical expertise to put to

the Tribunal the arguments which had been prepared by Clarke & Co. He referred to a letter dated 8 November 2011 sent by Clarke & Co to the Tribunal office, which expanded the grounds of appeal attached to the Notice of Appeal, and was a response to a letter to the Tribunal office sent by Miss Turkie on 1 November 2011.

16. Mr Bartram emphasised that he did not have sufficient papers to instruct solicitors to appear on his behalf in place of Clarke & Co, which had retained his papers. The only material available to assist him was that firm's letter dated 8 November 2011.

17. He submitted that there were two separate issues. One was the determinations. The other was whether the returns had been required in the first place. He mentioned a letter from HMRC which had said that there was no requirement to send back the returns.

18. If the technical position was that he had no right of appeal, he would accept that position. However, he did not accept that returns had been required by HMRC in the first place; he maintained that the letter from HMRC confirmed that they had not been required.

19. As his submissions on the question whether returns were required by HMRC raise the issue of my jurisdiction to consider those submissions, I deal with this issue at a later stage in this decision.

20. In the grounds of appeal, reference was made to s 197(1) FA 1994, to the definition of the "Tax Acts" in s 831(2) ICTA 1988, and the definition of the "Income Tax Acts" in s 831(1)(b). It was submitted that therefore a determination under s 28C was to be construed as an assessment. It was noted that the FTT had agreed that a determination was not a self assessment. Section 31(1)(d) TMA 1970 therefore applied. The FTT had therefore erred in law by incorrectly interpreting and applying the legislation.

21. Mr Bartram relied on the arguments set out in the letter from Clarke & Co dated 8 November 2011. He submitted that the legislation did not state in clear terms that there was no right of appeal. He wished to apply a statutory right of challenge to the determinations.

22. As the matters set out in the letter from Clarke & Co dated 8 November 2011 were in response to points raised by Miss Turkie in her letter dated 1 November 2011, it is more convenient for me to refer to them after setting out her arguments.

Arguments for HMRC

23. Miss Turkie submitted that the FTT had acted lawfully in striking out a matter which they had decided was not within their jurisdiction. She referred to s 28C TMA 1970. A determination was made where a taxpayer had been required, and had failed, to make a tax return.

24. The appeal had been pursued on the basis that there must be a right of appeal because a determination must have some way of being considered by the FTT. She submitted that the FTT had been correct in its comments that if a taxpayer thought that a determination was wrong, he could put in a tax return, or could argue before a court seeking to enforce the tax liability that the determination had been wrongly made. The inferences made by the FTT from the legislation had been correct; only an assessment gave rise to a right of appeal.

25. The argument for Mr Bartram was that a determination could be construed as "as assessment to tax which is not a self-assessment", and so give rise to rights of appeal under s 31(1)(d) TMA 1970. In support of this argument, reliance was placed on s 197 FA 1994.

26. It was claimed that this section applied to s 31 TMA 1970. Miss Turkie submitted that this was not the case. As the FTT had held, and as explicitly stated under s 197(1) FA 1994, an assessment could only be construed as a determination in relation to "the Tax Acts" and the "Gains Tax Acts". This cross-reference did not include TMA 1970, "the Management Act".

27. Section 197 had been brought in to ensure harmony between the old statutory regime for accounting for tax before self-assessment, and the new self assessment regime. It had nothing to do with appeal rights, nor with matters of tax management. There was a clear difference between management of taxes, which included appeals, and "the Tax Acts", which dealt with the charging of tax.

28. She submitted that s 197 was not equating an assessment with a determination. There was no right of appeal against a determination. Quite specifically, the legislation mentioned by s 197 did not include any reference to TMA 1970.

29. Miss Turkie referred to the purpose of a determination, as set out in HMRC's Self Assessment Guide "Self Assessment Tax Returns" at SALF209. If no tax return was submitted before 12 months of the date of the determination, the determination would stand. There was no appeal against the determination under s 28C TMA 1970. An appeal fell within Part V of "the Management Act", and the only parts of that Act which had effect were those set out at 28C(3). Part V was not mentioned in that sub-section. The appeal provisions of TMA 1970 did not, therefore, apply to a determination.

30. Miss Turkie dealt in detail with the relationship between s 197(1)(b) FA 1994 and the definitions of "the Tax Acts", "the Management Act", and "the Taxes Acts". Although s 197(1)(b) FA 1994 stated that an assessment was to be construed as including a reference to a determination, this was limited to references in the Tax Acts and the Gains Tax Acts, and not "the Taxes Acts". Only the latter would include an appeal under s 31 TMA 1970 ("the Management Act").

31. She submitted that the FTT had been correct in law to conclude that it did not have jurisdiction to consider an appeal against the determinations.

32. Analysis of the legislation under FA 1994 and the Finance Act 1998 ("FA 1998"), which respectively had introduced, and repealed part of, s 197 FA 1994, showed that s 197 had been introduced to clarify accounting periods in relation to self assessment (to commence the following year). It did not relate in any way to appeal rights.

33. Section 31 TMA had previously referred to determinations, in sub-s (3). Miss Turkie argued that, if Parliament's intention had been to refer to a determination, it would have done so specifically, rather than relying on an argument to be deduced from s 197 FA 1994 (not referred to in the Appeals section of TMA 1970). If [the Act] had been intended to merge determinations and appeals, it would not have made such a specific reference.

34. Miss Turkie referred to matters raised in Mr Bartram's skeleton argument. It raised issues that were not based on the grounds of appeal; permission to appeal had not been given in respect of those issues. The points made in the skeleton argument did not raise any question of law. An appeal to the Upper Tribunal could only be made on a question of law, as provided by s 11 of the Tribunals, Courts and Enforcement Act 2007.

35. The appeal should be dismissed on the basis that the FTT made no error of law identified in the grounds of appeal, and that the skeleton argument did not raise any questions of law.

Discussion and conclusions

36. The central element of the argument for Mr Bartram is that s 197 FA 1994 (see paragraph 10 above) is said to define a determination as an assessment. On the basis of that assumption, it is contended that an appeal is permitted by virtue of s 31(1)(d) TMA 1970, because the determination is an "assessment to tax which is not a self-assessment".

37. At paragraph 26 of its decision, the FTT referred to s 197 FA 1994 as having been repealed by the Finance Act 1998 ("FA 1998"). Although FA 1998 did repeal s 197, this was only in relation to corporation tax; s 197 continues to apply for other purposes.

38. Before addressing the issue of what falls within the definition of "the Tax Acts" for the purposes of s 197(1) FA 1994, the effect of the wording of s 197(1) needs to be closely examined. There is no suggestion, either in the decision of the FTT or in the arguments put by Mr Bartram's former advisers in the papers before me, of any detailed submissions concerning the construction or effect of the words used in s 197(1).

39. My reading of the sub-section is that it is dealing with the construction of references in the Tax Acts or the Gains Tax Acts to a person being assessed to tax, or being charged to tax by an assessment. It makes clear in s 197(1)(a) that being assessed or charged by a self assessment constitutes such an event. In the same way, s

197(1)(b) makes clear that being assessed or charged by a determination under s 28C TMA 1970 also amounts to being assessed to tax or being charged to tax by an assessment. Section 197(1)(b) also emphasises, by the words contained within the brackets, the effect of s 28C(3).

40. What s 197 does not go as far as to do is to define "a determination" as "an assessment". It is dealing with the question of a person "being assessed to tax", or "being charged to tax by an assessment". Linguistically speaking, s 197 is dealing with actions, albeit by means of passive verbs, rather than defining nouns.

41. The words in brackets in s 197(1)(b) are:

> "(which, until superseded by such a self-assessment, has effect as if it were one)."

The provision on which Mr Bartram seeks to rely to found a right of appeal is s 31(1)(d) TMA 1970, which refers to "any assessment to tax which is not a self-assessment".

42. Thus if the effect of s 197(1)(b) were to equate a determination to a self-assessment, this would mean that s 31(1)(d) would not provide a right of appeal.

43. The FTT found that a determination was not a self assessment; it set out its reasons at paragraph 18 of its decision. I agree with those reasons. It therefore acknowledged the possibility that an appeal might lie by virtue of s 31(1)(d) TMA 1970.

44. The words in brackets in s 197(1)(b) FA 1994 appear to me to be merely a description of the effect of s 28C TMA 1970, rather than being intended to have any substantive effect. The result is that the scope of the operation of s 28C is governed by its own wording, the relevant sub-section for the present purposes being s 28C(3). A determination has effect "as if it were such a self-assessment" only for the limited purposes set out in s 28C(3). The purposes listed exclude Part V of TMA 1970, which is the part of that Act containing s 31(1)(d) TMA 1970.

45. Thus the effect of s 28C TMA 1970 is that for the purposes of s 31(1)(d) TMA 1970, a determination does not amount to "a self-assessment". Accordingly, if a determination could be treated as amounting to "an assessment", an appeal might lie, as indicated by the FTT.

46. For the reasons given above, I am not satisfied that s 197(1) FA 1994 defines a determination as "an assessment". I think its purpose is much more likely to be have been to counteract arguments by taxpayers in the context of the newly introduced self-assessment system that they had not been "assessed to tax", or been "charged to tax by an assessment", under the applicable statutory provision if they had either made a self-assessment or had been issued with a determination. In that respect, I accept the submission of Miss Turkie that the purpose of s 197 was to ensure harmony between the previous statutory regime and the new self-assessment regime.

47. Even if, despite my view above, it were to be accepted that s 197(1) FA 1994 defined a determination as an assessment, there is a further obstacle to overcome in order to bring that "assessment" within s 31(1)(d) TMA 1970. Section 197(1) refers only to "the Tax Acts", which it does not define, and to "the Gains Tax Acts", which it specifically defines. There does not appear to be any separate definition of "the Tax Acts" in FA 1994. It is therefore necessary to refer to the definition of that expression contained in ICTA 1988. The definition of "the Tax Acts" in s 831(2) ICTA 1988 (see paragraph 12 above) is ICTA 1988 itself, the Income Tax Acts and the Corporation Tax Acts.

48. That definition does not include TMA 1970. The latter Act is separately defined in s 831(3) ICTA 1988 as "the Management Act". It is also referred to in exactly the same terms in a corresponding definition in s 199(1) FA 1994. "The Management Act" does not, therefore, fall within the definition of "the Income Tax Acts". There is no basis for including TMA 1970 in the definition of "the Tax Acts".

49. Mr Bartram's accountant, in his letter dated 8 November 2011, submitted that:

> "The link between TMA 1970 and the Taxes Acts is supplied by TMA 1970 s 118(1):
>
> The Taxes Acts means this Act [TMA 1970] and the Tax Acts".

50. It is clear that s 118 TMA 1970 contains that definition (set out in full at paragraph 13 above). However, the application of that definition is confined by its introductory words to TMA 1970 itself. It is not imported into s 197 FA 1994, or into any of the definition provisions in FA 1994.

51. TMA 1970 forms part of what is defined in s 118(1) TMA 1970 as "the Taxes Acts". However, that does not make it part of "the Tax Acts". The expressions may look similar, but they are not the same. Miss Turkie submitted that it was unfortunate that the drafters of the various pieces of legislation had used such apparently similar expressions to express different meanings. I agree; it does not make the task of construing the respective expressions at all easy. However, the very fact that s 118(1) TMA 1970 has to define "The Taxes Acts" as including itself *and* [my emphasis] "the Tax Acts" is an indication that TMA 1970 itself recognises that it does not form part of "the Tax Acts".

52. As s 118 TMA does not have any effect for the purposes of the other provisions of other Acts under consideration here, it does not assist in determining the effect or application of s 197 FA 1994.

53. There are accordingly two reasons why s 31(1)(d) TMA 1970 does not give rise to a right of appeal against a determination. The first is that s 197(1) FA 1994 does not (despite the assumption to the contrary made by Mr Bartram's former advisers) define a determination as an "assessment"; it merely equates the process of being made subject to a determination to the corresponding process of the taxpayer "being assessed to tax" or "being charged to tax by an assessment". The second reason is that s 197(1) FA 1994 does not apply to TMA 1970, because TMA 1970 does not come within the definition of "the Tax Acts".

54. I do not consider it to be a coincidence that both these reasons lead to the same conclusion. The scheme of the legislation is that the Tax Acts are concerned with a taxpayer "being assessed to tax" in accordance with the legislation contained in the Tax Acts. What constitutes "an assessment" is a matter for separate legislation, as contained in "the Management Act". I therefore agree with the conclusion of the FTT at paragraph 27 of its decision, and with Miss Turkie's submissions as recorded in the second and third sentences of paragraph 27 above.

55. The above conclusion brings the focus back to s 28C(3) TMA 1970. Until superseded by a self-assessment made under s 9 TMA 1970, a determination has effect for the stated purposes as if it were a self-assessment. The parts of TMA 1970 referred to in s 28C(3) are payment of tax, collection and recovery, interest on overdue tax, and "miscellaneous and supplemental". Other than the latter, these Parts are dealing with enforcement of liability to tax; "miscellaneous and supplemental" covers a range of mechanical matters, including the definition section, s 118 TMA 1970. An unchallenged determination enables HMRC to use the provisions for the purpose of enforcing the liability created by that determination.

56. There appears to be nothing else in TMA 1970 or elsewhere to support the existence of a right of appeal against a determination. Further, and consistently with the effect of s 28C TMA 1970, s 50(6)-(11) TMA 1970 (which falls within Part V – "Appeals and Other Proceedings") refers in all cases to "self-assessment" or "assessment" and not to "determination".

57. At paragraphs 28 to 33 of its decision, the FTT considered the scheme of s 28C TMA 1970, and concluded that the procedure envisaged by s 28C required no right to appeal against the amounts in any determination. It then considered the question what remedy a taxpayer has if a determination was purportedly issued where the conditions for its issue were not fulfilled. I agree with the conclusions set out by the FTT in those paragraphs.

58. In his note dated 7 February 2012 and in his argument before me, Mr Bartram mentioned a letter from HMRC dated 10 February 2006 to him. This (allegedly) confirmed that returns were not required. (As I have already stated, I am unable to consider matters relating to factual evidence, as the FTT made no formal findings of fact.) If his former advisers wished to dispute the making of the determinations on the basis of such a letter, it seems to me that it would have been advisable to establish, if necessary on the basis of expert advice from another source, whether a letter of that nature would have precluded HMRC from making determinations.

59. I make no comment on that question, but if the advice turned out to be that the letter would have precluded HMRC from making the determinations, it would then have been necessary to follow one of the courses set out by the FTT at paragraph 32 of its decision, in order to challenge the making of the determinations. Whether it would have been advisable to submit self assessment forms on a "without prejudice" basis, reserving the challenge against HMRC's right to make such determinations but preserving Mr Bartram's right to appeal against any subsequent amendment to his self

assessments, is a moot point. However, the present proceedings did not provide any opportunity for the making of the determinations to be challenged.

60. I agree with the FTT's conclusion at paragraph 35 of its decision that no appeal lies to the FTT against a determination made under s 28C TMA 1970.

61. The FTT was therefore required, pursuant to Rule 8(2)(a) of the FTT Rules, to strike out Mr Bartram's appeal against the determinations which he sought to contest on appeal.

62. I therefore dismiss Mr Bartram's appeal to this Tribunal.

63. No submissions were made to me in respect of costs. I do not consider that this is an appropriate case for any award of costs, and I therefore make no order as to costs.

Postscript

64. This decision was sent in draft to both parties for their comments. Mr Bartram responded with a number of points, as a result of which I find it necessary to add this postscript to the decision.

65. In summarised form, these points were:

(1) Mr Bartram has documentary evidence to support his claim that HMRC advised him that no further returns would be required. He has sent the relevant documentation to the Tribunal.

(2) HMRC had based their case on his not having made returns, and had claimed tax on that basis. There could be no justification for imposing liability on him for not making the later demanded returns. HMRC had, without supporting information, fabricated a set of "accounts" that they had not been able to substantiate.

(3) He argued that entering into a debate as to whether or not HMRC could make assessments was deliberately "muddying the water". Whatever HMRC wished to put forward should be factual and supported by evidence, not simply guessed and presented as "fact"; this could not be right and he wished to challenge the position.

(4) He referred in brief terms to the difficulties which he had encountered in trying to resolve the issue of his outstanding taxation affairs. If he was not allowed to challenge the determinations made by HMRC, this gave them total freedom to "make up anything they like". His adviser had taken the wrong path and should have emphasised the fact that the determinations in themselves were incorrect, rather than challenging the powers of HMRC to make determinations in the first place. He requested that the matter be permitted to be referred back to the FTT to address this error.

(5) He did not have any issue with HMRC as an organisation, only those individuals who were making decisions which he was not being allowed to

challenge. He asked that HMRC should be requested to provide the names and contact details of the individuals within HMRC with whom he could resolve these issues, to bring matters to closure. He requested any advice that could be offered to provide such closure, other than capitulation.

66. I have considered whether to refer Mr Bartram's points to Miss Turkie for her comments. My conclusion is that I should not do so before issuing this decision in its final form. I have various points to make on the matters which Mr Bartram has raised.

67. He has referred to, and supplied, evidence in the form of documentation. This includes the letter referring to the absence of need for further returns. As I have explained above, the FTT did not make any findings of fact; in the light of its decision that no appeal lay against the determinations, the FTT was precluded from considering any matters of fact. The position of this Tribunal when considering a matter by way of appeal is that it is not a fact-finding Tribunal; it can only consider matters of fact which were considered by the FTT. It is therefore not open to this Tribunal to consider factual matters, and in particular documents, which have not previously formed part of the decision-making process within the appeals system. It is for that reason that I have to continue to refer at paragraph 58 above to HMRC's letter "allegedly" confirming the matter in question. It is not open to me to take further account of the letter beyond acknowledging that it forms part of the argument which Mr Bartram wishes to pursue.

68. His next point is that HMRC had, without supporting information, arrived at conclusions as to his tax liability based on their views; he argued that these could not be substantiated. However, for some reason the decision as between him and his former adviser appears to have been that the determinations should not be challenged by putting in self assessment returns for the relevant years. If this had been done, either the returns could have resolved the dispute, or if not accepted by HMRC, the matter could have been brought to appeal in the conventional way and resolved if necessary by the FTT. By allowing the determinations to stand without challenge as to the amounts of tax stated to have been due, the opportunity to obtain final resolution of agreed liabilities for the years in question was lost.

69. To put matters in stark terms, Mr Bartram had a choice. If he had wanted to keep open the ability to question within the Tribunal appeals system the amounts of the tax stated by the determinations to be due, he needed to take the path labelled "submit self assessments". By deciding to follow the other path and allow the determinations to stand unchanged, he denied himself the opportunity of challenging on appeal the amounts of tax demanded as a result of those determinations.

70. He has requested that the matter be referred back to the FTT. This is not a course of action open to this Tribunal. The only question raised by the appeal to this Tribunal is whether the FTT was correct in its decision to strike out Mr Bartram's appeal. As I have indicated above, I am satisfied that the FTT's decision to do so was correct. This Tribunal, as a creature of statute and therefore limited in its functions by the statutory provisions in question, does not have more general powers in the context of such an appeal to deal with matters which go beyond the scope of that appeal.

71. Clearly Mr Bartram needs to find some way to resolve matters, if the circumstances now permit him to do so. As the FTT indicated, his remedy does not lie within the scope of an appeal to the FTT. Nor, in my view, does it lie within the scope of an appeal to this Tribunal against the FTT's decision to strike out his appeal against the determinations.

72. The FTT did refer briefly in general terms to the remedies available to a taxpayer who is subjected to a demand for tax under what that taxpayer considers to be an invalid determination. At paragraph 32 of its decision, two courses were mentioned. The first was to contest the demand in the forum in which HMRC sought to enforce it, ie to seek to defend enforcement proceedings on the grounds of invalidity of the determinations. The second was to institute judicial review proceedings in the High Court for a declaration that each of the determinations was a nullity.

73. I agree with the FTT's comments. Whether or not there might be any other means of challenging determinations is not an appropriate question for me to consider; such issues are well beyond the scope of the matters which can be raised in the context of the present appeal.

74. Mr Bartram has asked for HMRC to be requested to provide the names of individuals with whom his difficulties could be resolved. Again, this is a matter over which this Tribunal has no powers in the context of the matter under appeal.

75. In addition, he has asked for advice. Neither this Tribunal nor the Tribunals Service can provide such advice. It may well be that if the matters in question can be resolved, this can best be done after taking appropriate expert legal advice, but it is for Mr Bartram to decide whether he wishes to pursue this course.

76. In short, the matters which Mr Bartram seeks to raise in his additional comments are beyond the scope of this Tribunal's powers. I have to confirm the dismissal of his appeal against the decision of the FTT to strike out his appeal against the determinations.

JOHN CLARK
JUDGE OF THE UPPER TRIBUNAL

RELEASE DATE: 30 May 2012