



TC02328

Appeal number: TC/11/06372

Income Tax – further assessment – error by HMRC in processing Return – whether “correction” and timeous – strike-out application under Rule 8(3)(c) – Sections 9ZB, 34, and 114 Taxes Management Act 1970 – Application to strike-out allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALAN CHURCHILL

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE KENNETH MURE, QC

**Sitting in public at George House, 126 George Street, Edinburgh on
26 September 2012**

Mr Brian McCormack, PKF, for the Appellant

**Ms Chris Cowan, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

Introduction

1. This is an application by HMRC for strike-out of the Appeal under Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. It is made on the basis that there is no reasonable prospect of the Appellant's case, or part of it, succeeding. The Grounds of Appeal are that the Return was not amended timeously during the nine months following the date on which it was filed, contrary to the provisions of Section 9ZB TMA 1970. A further issue which arose in the course of the hearing was whether the Tribunal had jurisdiction to review the possible application of Extra Statutory Concession A19.

The facts

2. These did not appear to be in dispute and I find as follows:-
- (i) On 29 February 2008 the Appellant received about £100,000 as a termination payment from Post Office Counters. This was correctly entered in his Return for the Year 2007/2008 which was received on 31 October 2008.
 - (ii) An assessment to tax in the sum of £4,854.80 was made on the Appellant in respect of the Year 2007/2008. HMRC had omitted to take into account the termination payment because of its error in "capturing" the information in the Return onto its computer systems. Neither the taxpayer nor his accountant alerted HMRC of the error.
 - (iii) An Enquiry was made by HMRC in relation to the Appellant's Return for the following Year, 2008/2009. That Enquiry was concluded on 11 November 2010 and the Return was not amended. However on 12 November 2010 HMRC issued a further assessment in respect of 2007/2008 to charge to tax the compensation payment.
 - (iv) A Surcharge was imposed on the Appellant for failure to pay the additional tax due timeously. This was 5% of the further tax due of £25,523.08.

The law

3. Section 9ZB of the Taxes Management Act 1970 (TMA) provides:-
- (1) An officer of the Board may amend a Return under Section 8 or 8A of this Act
 - ...
 - (3) No such correction may be made more than nine months after –
 - (a) the day on which the Return was delivered

...

Section 34 provides:-

5 “(1) Subject to the following provisions of this Act ... an assessment to income or capital gains tax may be made at any time not more than 4 years after the end of the year of assessment to which it relates.”

Section 114 provides:-

“(2) An assessment or determination shall not be impeached or affected –

(a) by reason of a mistake therein as to –

(iii) the amount of the tax charged

10 ...”.

Submissions

4. On behalf of HMRC Ms Cowan submitted that Section 9ZB was not relevant. In this case there had not been a “correction”. HMRC did not seek to alter the Return, but rather cure a fault in its processing systems which had not “captured” accurately the information contained in the Return.

5. The time-limit applicable, Ms Cowan argued, was that provided for in Section 34 TMA, of four years from the end of the relevant Year of Assessment. She relied also on the terms of Section 114 TMA which confirmed that an assessment was not invalidated because of an error in the amount of tax charged.

20 6. Ms Cowan argued further that it was reasonable to expect the taxpayer and his advisers to have appreciated that there was an error in the calculation. The termination payment resulted in a substantial additional tax liability, more than the usual level of liability paid by him in previous years. He should have known that the original assessment was incorrect. She argued that the terms of Extra Statutory Concession A19 were inapplicable in such circumstances, but in any event this Tribunal did not have jurisdiction to consider such an issue. Reference was made to the appeals of *Michael Prince & Others* [2012] UKFTT 157 (TC).

30 7. In the circumstances Ms Cowan submitted that there was no reasonable prospect of the case succeeding and accordingly it should be struck out under Rule 8(3)(c). The Tribunal did not have jurisdiction to review the possible application of an Extra Statutory Concession. Finally, the Appeal against the surcharge should be struck out also. It related to failure to pay after the period of 30 days following the additional assessment.

35 8. In reply the essence of Mr McCormack’s argument was that the further assessment was time-barred by virtue of Section 9ZB. He referred also to internal HMRC procedural guides, SALF nos. 204 and 409. These, he considered, supported

his argument as to time-bar. He noted also the decision in *Michael Prince* and the possible application of ESC A19.

Decision

5 9. I consider that the stance of HMRC is well-founded, and agree with Ms Cowan's interpretation of the relevant legislation. What has given rise to the dispute was an error on the part of HMRC's staff in processing onto their computer system the information – entirely accurate and unchallenged – recorded by the taxpayer on his Return for 2007/2008.

10 10. Section 9ZB TMA operates in circumstances where there is a correction or amendment of the Return made by HMRC. I agree with Ms Cowan that the Return and its contents were not corrected here. There was an additional assessment, made once HMRC appreciated their error. Thus HMRC is not circumscribed by the time-limit of Section 9ZB, but rather is enabled by Section 34 TMA to make a further assessment within the four year period prescribed therein. Section 114(2) also
15 supports the stance of HMRC.

11. Mr Churchill fulfilled all his obligations in providing an accurate Return for 2007/2008. Happily I do not consider that he has been prejudiced. The additional assessment represents the tax due in respect of the admittedly taxable receipt – no more, no less – and the penalty is related to the 30 day period running from the date of
20 the later supplementary assessment, not from the earlier date when it would have been due had HMRC's original calculation been correctly made.

12. For these reasons I consider it appropriate to allow the Respondent's Application for strike-out of the Appeal. Further, I cannot competently consider the possible application of ESC A19.

25 13. 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
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

35 **JUDGE KENNETH MURE, QC**
TRIBUNAL JUDGE

RELEASE DATE: 23 October 2012

40