[2019] UKFTT 307 (TC)

TC07135

PROCEDURE – jurisdiction – effect of agreement under s54 Taxes Management Act 1970 – whether period to repudiate or resile from an agreement under s54(2) could be extended where the taxpayer had a reasonable excuse within s118(2) Taxes Management Act 1970 – no – appeal struck out

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2016/04897

BETWEEN

GRAHAM BULL **Appellant**

-and-

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

TRIBUNAL: JUDGE ASHLEY GREENBANK

Sitting in public at Leeds on 30 April 2019

Gary Brothers, of The Independent Tax and Forensic Services LLP, for the Appellant

John Corbett, officer of HM Revenue and Customs, for the Respondents

DECISION ON A PRELIMINARY ISSUE

INTRODUCTION

1. These proceedings involve an appeal by Mr Graham Bull against assessments to income tax and capital gains tax for tax years from 1996-97 to 2010-11 in the aggregate amount of £149,177 and related penalty determinations in the aggregate amount of £82,592. Those amounts are before interest. The total amount at stake (tax, penalties and interest) at the date of the hearing was estimated by the parties to be £351,996. Mr Bull says that the assessments and determinations are excessive and based on inaccurate information.

2. The assessments and determinations were subject to agreements between Mr Bull and HMRC under section 54(1) of the Taxes Management Act 1970 ("TMA"). Mr Bull sought to resile from those agreements outside the 30 day period specified in section 54(2) TMA. He says that he should be permitted to resile from the agreements outside the 30 day time period allowed in section 54(2) because he had a reasonable excuse (within section 118(2) TMA) for failing to comply with the time limit and acted promptly once that excuse ceased to exist.

3. The question arose as to whether the matters raised by the appeal against the assessments and determinations should be regarded as having been determined by the agreements under s54(1) TMA (or whether Mr Bull should be regarded as having resiled from those agreements) and accordingly whether or not the Tribunal had jurisdiction to hear the appeal.

4. In directions given by the Tribunal on 10 January 2017, the Tribunal (Judge Poole) directed that the following should be determined as a preliminary issue:

> "(a) Does the Tribunal have jurisdiction to consider this appeal; and (b) if it has such jurisdiction, should it exercise it so as to allow the appeal to proceed to a substantive hearing?"

THE HEARING

5. This hearing related to that preliminary issue.

6. For the purpose of the hearing, I was provided with separate bundles of documents by each party.

7. The appellant's documents included a witness statement of Mr Bull. Mr Bull was not present at the hearing to be cross-examined on his witness statement. However, the witness statement was accepted by Mr Corbett on behalf of HMRC subject to certain matters which he challenged. I accepted the witness statement in evidence on that basis.

THE BACKGROUND TO THESE PROCEEDINGS

8. I have set out below a short background to the proceedings, the aim of which is to provide some context for the discussion that follows. This summary is taken from the documentary evidence as provided to me by the parties.

9. Mr Bull was a self-employed builder and plasterer. He also had a property rental business and had sold a number of properties.

10. An enquiry into his tax return for 2003-04 was taken over by HMRC Civil Investigation Team in 2008. Mr Bull was subject to investigation under Code of Practice 9. The enquiry expanded into a number of tax years.

11. Mr Bull instructed a firm of accountants, Riddingtons, to assist him with the investigation. Riddingtons were appointed as tax agents for Mr Bull.

12. HMRC issued closure notices, assessments and penalty determinations in September 2010. There were 16 closure notices and assessments for income tax and/or capital gains tax and 13 penalty determinations in respect of tax years from 1996-7 to 2010-11.

13. Mr Bull appealed against the assessments and determinations.

14. The negotiations between HMRC and Riddingtons continued. On 15 July 2013, Riddingtons wrote to HMRC to withdraw the appeals against the assessments and determinations for the tax years 2003-04 to 2005-06. On 13 August 2013, HMRC wrote to Mr Bull to confirm that the appeals for those years had been withdrawn and were now considered to be settled under s54(1) TMA. HMRC advised Mr Bull to advise HMRC within 30 days if he did not agree that the appeals were settled.

15. Following a meeting held on 28 November 2013, Riddingtons agreed the amounts due for the other outstanding periods with HMRC. The remaining assessments and determinations were settled by agreement under section 54(1) TMA on 20 December 2013.

16. In July 2014, HMRC issued proceedings to recover the amounts due from Mr Bull.

17. At this stage, Mr Bull appointed new advisers, The Independent Tax and Forensic Services LLP ("Independent Tax"). On behalf of Mr Bull, Independent Tax sought to resile from the agreements under section 54(1) TMA that had been entered into by Riddingtons on Mr Bull's behalf and to reopen the appeal to HMRC against the various assessments and penalty determinations.

18. There was extensive correspondence between Independent Tax and HMRC. As a result of that correspondence, Mr Bull sought to notify appeals against the assessments and penalty determinations to the Tribunal on 13 September 2016.

19. The appeal was referred to Judge Poole who made the direction on 10 January 2017 for the matters currently before the Tribunal to be determined as a preliminary issue.

THE LEGISLATIVE BACKGROUND

20. The preliminary issue is whether or not the Tribunal has jurisdiction to determine this appeal and, if so, whether it should exercise that jurisdiction.

21. HMRC asserts that the Tribunal does not have jurisdiction to hear the substantive appeal on the grounds that the determination of appeals which are the subject of agreements under s54(1) TMA is "final and conclusive" and there is no further right of appeal in relation to the matters agreed.

22. Section 54(1) TMA is in the following form:

> (1) Subject to the provisions of this section, where a person gives notice of appeal and, before the appeal is determined by the tribunal, the inspector or other proper officer of the Crown and the appellant come to an agreement, whether in writing or otherwise, that the assessment or decision under appeal should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the tribunal had determined the appeal and had upheld the assessment or decision without variation, had varied it in that manner or had discharged or cancelled it, as the case may be.

23. Section 54(1) therefore provides for agreements between HMRC and an appellant taxpayer in relation to matters under appeal to be treated for all purposes in the same manner as if such matters had been determined by the Tribunal. In this respect, s50(10) TMA provides that:

> (10) Where an appeal is notified to the tribunal, the decision of the tribunal on the appeal is final and conclusive.

It follows that, where an appeal is settled by an agreement that falls within s54(1) TMA, the agreement in relation to the matters under appeal is also "final and conclusive".

24. Section 54(2) TMA allows an appellant taxpayer a period of 30 days in which to repudiate or resile from an agreement within s54(1). It provides:

> (2) Subsection (1) of this section shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the inspector or other proper officer of the Crown that he desires to repudiate or resile from the agreement.

25. Sub-section (3) of s54 deals with agreements that are not in writing and is not relevant for present purposes. Sub-section (4) deals with cases where appeals are withdrawn. It provides:

> (4) Where—
>
> (a) a person who has given a notice of appeal notifies the inspector or other proper officer of the Crown, whether orally or in writing, that he desires not to proceed with the appeal; and
>
> (b) thirty days have elapsed since the giving of the notification without the inspector or other proper officer giving to the appellant notice in writing indicating that he is unwilling that the appeal should be treated as withdrawn,
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> the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the inspector or other proper officer had come to an agreement, orally or in writing, as the case may be, that the assessment or decision under appeal should be upheld without variation.

26. Section 54(5) extends the provisions of the section to agreements made between HMRC and a person acting on behalf of an appellant taxpayer.

> (5) The references in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

27. The preliminary issue relates to the interaction of the provisions of s54 TMA with those of s118(2) TMA, which provides a taxpayer with relief from the application of certain time limits set by the TMA. It provides:

> (2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

It is the second part of s118(2) TMA which is in issue in this case, i.e. the words after the semi-colon.

THE ISSUES BEFORE THE TRIBUNAL

28. For present purposes, there are two relevant agreements within s54(1) TMA:

(1) an agreement treated as made (by s54(4) TMA) on 15 July 2013 following the withdrawal of the appeals in relation to the tax years 2003-04 to 2005-06; and

(2) an agreement in relation to the remaining tax years made on 20 December 2013.

I have referred to these two agreements together as "the s54 agreements" in this decision notice.

29. Mr Brothers, on behalf of Mr Bull, accepted that the s54 agreements were binding agreements falling within s54(1) TMA, subject to Mr Bull's right to resile from the agreements under s54(2) TMA. In particular, he accepted that Riddingtons had authority as Mr Bull's agents to enter into the agreements on Mr Bull's behalf. He did not seek to argue that the agreements could be vitiated in any way.

30. Mr Brothers also accepted, on behalf of Mr Bull, that Mr Bull had failed to resile from the s54 agreements within the 30 day period allowed by s54(2) TMA. The agreements were made or treated as made on 15 July 2013 and 20 December 2013 and so the 30 day periods expired on 14 August 2013 and 19 January 2013 respectively. (It is arguable that HMRC's letter of 13 August 2013 extended the period for Mr Bull to resile from the agreement in relation to the tax years 2003-04 to 2005-06 until 12 September 2013, but nothing turns on this issue.)

31. The only issues before the Tribunal were:

(1) whether the second part of s118(2) TMA could apply so that, if Mr Bull had a reasonable excuse for failing to resile from the agreements within the 30 day period specified by s54(2), he might be treated as not having failed to do so provided that the excuse had not ceased when Mr Bull did resile from the agreements or, if his excuse had ceased, Mr Bull resiled from the agreements without unreasonable delay after the excuse had ceased; and

(2) if so, whether Mr Bull, in fact, had a reasonable excuse for failing to resile from the agreements within the 30 day period, and, if so, whether he did resile from the agreements before the excuse had ceased or without unreasonable delay after the excuse had ceased.

32. I will deal with these issues in turn.

CAN S118(2) APPLY TO PERMIT A TAXPAYER TO RESILE FROM A S54 AGREEMENT OUTSIDE THE 30 DAY PERIOD PERMITTED BY S54(2)?

HMRC's submissions

33. Mr Corbett, for HMRC, says that s118(2) TMA cannot apply to permit a taxpayer to resile from an agreement within s54(1) outside the 30 day period specified by s54(2) TMA.

34. Mr Corbett relies on the decision of the Court of Appeal in *Revenue and Customs Commissioners v. Raftopoulou* [2018] EWCA Civ 818, [2018] STC 988 ("*Raftopoulou*") and, in particular, the passage in the judgment of David Richards LJ in that case at [63] to [66].

35. He says that it is clear from the decision of the Court of Appeal in that case that the second part of s118(2) can only apply to acts which a taxpayer is required to take as a result of mandatory provisions of the TMA. For example, it can apply to the failure of a taxpayer to file a tax return within the required time limit for which there might otherwise be a financial penalty. The second part of s118(2) could not, however, apply to extend the time limits under the TMA which were placed on actions which a taxpayer was permitted to take, but not required to do so. The ability of a taxpayer to resile from an agreement within s54(1) was an action which fell within this latter category. In that respect, it was similar to the right of a taxpayer to claim a repayment of overpaid tax, which was the subject matter of the decision in *Raftopoulou*.

36. Mr Corbett noted that an agreement under s54 was to be treated as a decision of the Tribunal and therefore final and conclusive. It was not possible for a taxpayer or HMRC to go back to the Tribunal after a decision had been given and reopen the case. The same had to be true for an agreement under s54(1).

37. For these reasons, the appeals should be treated as finally determined. The Tribunal had no jurisdiction to consider a matter which had been determined by an agreement under s54. The appeal should be struck out under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("FTRs").

Mr Bull's submissions

38. Mr Brothers, for Mr Bull, disagrees.

39. He says that the second part of s118(2) can apply to agreements within s54(1). The decision in *Raftopoulou* concerned the application for a repayment of tax that had been overpaid. That was very different to the present case. The claim made by the taxpayer in that case was made one year after an extended four year period in which the claim could have been made. Those facts were very different from the present case in which the taxpayer only had 30 days within which to resile from an agreement under s54.

40. In any event, Mr Bull's case was "on all fours" with *Raftopoulou*. Mr Bull was not seeking a future benefit of the kind described by David Richards LJ in *Raftopoulou* at [66]. Mr Bull was simply seeking the opportunity to ensure that the correct amount of tax would be paid.

41. Mr Bull's appeal was consistent with the other principles of the judgment of David Richards LJ in *Raftopoulou*. Section 118(2) TMA was a relieving provision. Mr Bull was seeking relief from the application of sanctions arising from his failure to resile from the s54 agreements within the relevant time limit. Parliament had provided for relief from that sanction in appropriate circumstances in s118(2). If it was not possible for Mr Bull to obtain that relief, he would face personal bankruptcy even though he had credible case which could be put to the Tribunal.

Discussion

42. This issue turns on the correct interpretation of the second part of s118(2) TMA and its interaction with s54(2) TMA.

43. Both parties have referred me to the decision of the Court of Appeal in *Raftopoulou*. That case involved a claim by a taxpayer, Dr Raftopoulou, for repayment of overpaid income tax under Schedule 1AB TMA. The claim was made outside the statutory four year time limit for such a claim. The claim was rejected by HMRC.

44. The First-tier Tribunal granted HMRC's application to strike out the appeal on the grounds that the Tribunal did not have jurisdiction to hear the appeal. The Upper Tribunal allowed the taxpayer's appeal finding that s118(2) could apply to deem a claim to have been made within the relevant time limit if the taxpayer could show that she had a reasonable excuse and that a deemed claim was a claim within Schedule 1A TMA and so could give rise to a right to appeal. The Upper Tribunal remitted the case to the First-tier Tribunal for it to determine whether or not the taxpayer had a reasonable excuse.

45. The Court of Appeal (Arden LJ and David Richards LJ) allowed HMRC's appeal. It did so on two grounds. The first of those grounds is not directly relevant to the present case, but, in short, the Court of Appeal found that HMRC's rejection of the claim for repayment of tax did not give rise to a right of appeal under Schedule 1A TMA. The only remedy for the taxpayer was by judicial review.

46. The second ground related to the application of s118(2) TMA. The Court of Appeal, again reversing the decision of the Upper Tribunal on this point, decided that s118(2) TMA was not capable of applying to a repayment claim that was made out of time.

47. On this second issue, David Richards LJ, who gave the only reasoned judgment, began by setting out the structure and purpose of s118(2) TMA. He said this at [55]:

> "**55** The UT noted three propositions advanced on behalf of HMRC with which Mr Thomas on behalf of the taxpayer did not disagree. First, section 118(2) has two parts, separated by a semi-colon. Only the second part is directly relevant to the present case, but the first part may be relevant to the proper construction of the second part. Second, the purpose of the first part is to deal with cases where HMRC have extended time pursuant to their collection and management powers, for example by allowing payment by instalments, with the result that penalties cannot be imposed if the act in question is performed within the extended period. Third, the second part is broader in its application. It is not expressly limited to cases of time limits but can apply when there has been a complete failure to do something."

48. He continued to set out his construction of s118(2) (with which Arden LJ agreed). The key passage in his judgment is at [63] to [66].

> "**63** As earlier stated, I agree with the UT that the critical words that have to be construed are "anything required to be done". The starting point is to consider the ordinary and natural meaning of those words in their context.
>
> **64** Even without attending too closely to the context, I take a different view to the UT as to the natural and ordinary meaning of the critical words. As it seems to me, they ordinarily cover mandatory acts, rather than the conditions attached to the voluntary exercise of rights. To be valid, a repayment claim must be made within four years of the end of the relevant tax year, but there is no requirement imposed on a taxpayer to make a repayment claim within four years or at all. I would not disagree with the UT that it is no stretch of language to say that if a taxpayer chooses to make a claim, it "is required to be done" within a certain time limit, but that is not to say that the ordinary meaning of the unqualified words "anything required to be done" extends to the performance of a condition for a valid claim.
>
> **65** The immediate linguistic context of those words is important. There are, in my judgment, two significant features of the terms of section 118(2). First, it is in my view significant that the first part refers to "anything required to be done within a limited time". If the purpose of the second part included the extension of time, it is surprising that the drafter included no similar words in that part.
>
> **66** Second, the deeming effect of the second part is of central importance. It does not deem anything to have been done, either within a time limit or at all. It provides only that the person in question shall be deemed "not to have failed to do it". It relieves the person of the consequences of failing to do the thing, which in the context of the TMA 1970 is a financial penalty, but does not go further and provide the benefits of having in fact done the thing which the person has failed to do. I do not accept Mr Thomas' submission that it is the necessary corollary of a provision that a person is deemed not to have failed to do an act that he is deemed to have done that act. The one does not necessarily lead to the other, particularly where the consequences of the two are potentially very different, as is the case where a deemed non-failure will avoid a penalty, but a deemed performance will secure a benefit. As Peter Gibson J (giving the only reasoned judgment of this court) said in *Marshall v*

> *Kerr* (1995) 67 TC 56 at 79, when considering the correct approach to the construction of deeming provisions, "because one must treat as real that which is only deemed to be so, one must treat as real the consequences and incidents *inevitably* flowing from or accompanying that deemed state of affairs, unless prohibited from doing so" (emphasis added)."

49. The principles that I draw from the decision of the Court of Appeal in *Raftopoulou* are therefore as follows.

(1) In construing the critical words in the second part of s118(2) TMA ("anything required to be done"), a distinction should be made between acts which are mandatory under the TMA and conditions that are imposed on the voluntary exercise of rights under the TMA (*Raftopoulou* [64]). It is only mandatory acts which are "required to be done" by the legislation and to which the second part of s118(2) can apply.

(2) The purpose of the second part of s118(2) is not generally to extend all time limits in the TMA where the taxpayer may have a reasonable excuse for failing to meet the time limit (*Raftopoulou* [65]).

(3) The deeming effect of the second part of s118(2) is limited. It provides only that the taxpayer shall be deemed not to have failed to do something. It does not deem a person to have done something which that person had failed to do (*Raftopoulou* [66]).

50. In my view, the right of a taxpayer to resile from an agreement under s54(1) within the 30 day period in s54(2) falls into the second category. It is a "voluntary right" (to adopt the terminology of David Richards LJ) and the 30 day time limit in s54(2) is simply a condition which the taxpayer is required to fulfil in order to exercise that right. The TMA does not require the taxpayer to resile from an agreement under s54. The taxpayer has a right to do so, but, if the taxpayer chooses to exercise that right, he or she must do so within 30 days. In this respect the right to resile from an agreement under s54 is similar to the right to make a claim for a repayment of unpaid tax under Schedule 1AB.

51. I acknowledge Mr Brothers's point that this conclusion denies Mr Bull a right to appeal in circumstances where he may or may not have valid arguments against the assessments or determinations. However, in my view, the time limit is an important element in ensuring that finality and certainty is brought to tax affairs for the benefit of both HMRC and taxpayers. The 30 day period is specifically designed exception to the general rule that agreements within s54 are immediately binding to allow taxpayers a "cooling off" period to repudiate any agreement that has been reached. However, after that 30 day period has elapsed, an agreement becomes binding. If s118(2) were to be permitted to apply in these circumstances, the effect would be to extend the period to repudiate or resile from an agreement within s54 potentially indefinitely whilst a reasonable excuse persisted, with all of the attendant consequences in terms of lack of certainty and finality.

52. For these reasons, I agree with HMRC that the second part of s118(2) TMA cannot apply to permit the extension of the time limit in s54(2) TMA. The s54 agreements must be treated as final and conclusive of the matters under appeal. And I must strike out this appeal under FTR rule 8(2)(a) on the grounds that the Tribunal has no jurisdiction to hear this appeal as these matters must be treated as determined under s54(1) TMA.

53. In his skeleton argument, Mr Corbett also sought to justify an application to strike out this appeal on the grounds that there was no right to appeal against HMRC's refusal to permit a late claim to resile from an agreement within s54(1) TMA. This point was not argued before me, but it would appear to me to provide an alternative basis for an application to strike out this appeal.

DID MR BULL HAVE A REASONABLE EXCUSE?

54. My decision on the first issue decides this appeal in favour of HMRC. I did, however, hear argument from the parties on the second issue. So, in case this matter is subject to appeal, I will briefly set out my comments on it.

Mr Bull's submissions

55. Mr Brothers said Mr Bull did have a reasonable excuse. He pointed to the following factors.

(1) Mr Bull was not aware of the settlement that had been reached with HMRC until July 2014 when HMRC took proceedings to enforce the agreement. This was because HMRC had addressed correspondence to Mr Bull to the incorrect address. Mr Brothers pointed to the fact that the letter of 13 August 2013 was addressed to Mr Bull's brother's business address and not Mr Bull's home address. HMRC had written to various other addresses for Mr Bull, none of which were his correct home address. HMRC were aware that these were not the correct addresses.

(2) Mr Bull was suffering from depression and a nervous breakdown at the time of the HMRC investigation. His mental illness prevented him from dealing properly with the HMRC investigation. Mr Brothers pointed to various documents which referred to Mr Bull's illness as evidence of this.

(3) Mr Bull was let down by his adviser. He was not kept informed of the development of the negotiations with HMRC or the full implications for him and had not given his permission to Riddingtons to accept the terms of the agreement. It was entirely appropriate for Mr Bull, who was not familiar with tax legislation, to rely heavily on his professional advisers. Mr Brothers relied on statements to this effect in Mr Bull's witness statement and in correspondence from Riddingtons in support of this submission.

(4) As soon as Mr Bull became aware of the consequences of the agreement, which was when enforcement proceedings were taken, Mr Bull took immediate action. He appointed new advisers and sought to resile from the s54 agreements.

HMRC's submissions

56. Mr Corbett relied primarily on his arguments on the first issue. As regards the question as to whether Mr Bull did have a reasonable excuse for failing to resile from the s54 Agreement within the 30 day time limit, he made the following points.

(1) First, HMRC had sent letters to the address given by Mr Bull at the time. Letters were also sent to Mr Bull's agent. No letters were returned unopened. The correspondence with Mr Bull and his agent was maintained. There was no evidence that Mr Bull was not aware of the chain of correspondence. Furthermore, the letter of 13 August 2013 was sent to the same address as the address Mr Bull gave on his notice to appeal in these proceedings in 2016.

(2) HMRC had requested medical evidence of Mr Bull's mental illness. No evidence had been forthcoming.

(3) Mr Bull had been represented throughout by respected accountants. Mr Bull had not sought to argue that his accountants were not a properly authorized agent. HMRC had to be entitled to rely upon agreements entered into with an authorized agent. Indeed, s54(5) TMA allowed HMRC to do so.

Discussion

57. Mr Brothers has raised three reasons why Mr Bull should be regarded as having a reasonable excuse for failing to resile from the s54 agreements within the 30 day period permitted by s54(2) TMA.

58. He points first to the effect of the investigation on Mr Bull's mental health. He says that, as a result, Mr Bull found it difficult to deal with his tax affairs or fully to appreciate the consequences of the negotiated settlement.

59. The evidence of the state of Mr Bull's mental health at relevant times is not as strong as it might be. There is reference to the state of Mr Bull's mental health in some of the correspondence and in Mr Bull's witness statement. However, as I mentioned above, Mr Bull was not present at the hearing to be cross-examined on his witness statement and, as Mr Corbett pointed out, there was no medical evidence to support the statements in the witness statement or in the correspondence. HMRC asked for medical evidence of Mr Bull's state of health in the course of the investigation, but none was provided by Mr Bull or by his agents at the time or at any later stage.

60. I have, therefore, taken into account the likely effect of the investigation on Mr Bull's mental health, but had regard to the issues surrounding the evidence raised by Mr Corbett.

61. The second issue to which Mr Bull refers is the level of Mr Bull's awareness of the terms of the s54 agreements. In support of this point, he refers to the various addresses to which HMRC sent the correspondence during the course of the investigation. He says that Mr Bull was not aware of the details of the settlement because HMRC failed to ensure that relevant correspondence was sent to the correct address.

62. I have dismissed this point. The documentary evidence does not suggest that Mr Bull was unaware of the progress of the negotiations. There are various references in the correspondence to Riddingtons referring matters to Mr Bull. As Mr Corbett points out the letter sent by HMRC following the withdrawal of the appeals for the tax years 2003-04 to 2005-06 was sent to the same address as Mr Bull gives in his notice of appeal in 2016.

63. The third issue to which Mr Bull refers is that Mr Bull relied upon his advisers, Riddingtons. Riddingtons did not seek Mr Bull's approval before agreeing to the settlement with HMRC or explain the consequences of that settlement to Mr Bull. He relies on Mr Bull's witness statement in this respect. Mr Corbett did not challenge this aspect of Mr Bull's witness statement.

64. The question is whether Mr Bull's reliance on his advisers was a reasonable excuse for his failure to resile from the s54 agreements within the 30 day time limit. These were relatively complicated matters, involving an investigation into tax fraud. As a builder and plasterer by trade, in the circumstances, I accept that it was reasonable for Mr Bull to rely heavily upon his professional advisers. I also accept that the failure of Riddingtons fully to explain the consequences of the s54 agreements to Mr Bull or to seek his specific approval before agreeing matters with HMRC could amount to a reasonable excuse within s118(2) for Mr Bull's failure to resile from the agreements within the 30 day period.

65. On the facts, it is difficult to determine whether that excuse persisted beyond the time of the agreements themselves. As I have mentioned above, in my view, Mr Bull was aware of the terms of the agreements. However, I am prepared to accept that he was not aware of the full consequences for him until the proceedings to recover the tax debts were started by HMRC. That was a reasonable excuse and Mr Bull acted promptly once he realized the full consequences to resile from the agreements and to instruct new advisers.

66. If I am wrong on the first issue, I would therefore accept that Mr Bull had a reasonable excuse within s118(2) TMA for his failure to resile from the s54 agreements within the 30 day time limit in s54(2).

CONCLUSION

67. That having been said, for the reasons that I have given in relation to the first issue, in my view, s118(2) TMA cannot apply to extend the time limit in s54(2). Accordingly, I strike out this appeal pursuant to FTR rule 8(2)(a) on the grounds that the Tribunal does not have jurisdiction in relation to the proceedings.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

68. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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.

ASHLEY GREENBANK
TRIBUNAL JUDGE

RELEASE DATE: 10 MAY 2019