



TC03935

Appeal number: TC/2013/06734

PROCEDURE – Strike out application – Claim for overpayment relief brought out of time – Jurisdiction of Tribunal – Appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DR VASILIKI RAFTOPOULOU

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in public at 45 Bedford Square, London WC1 on 2 June 2014

The Appellant in person

Sian Howells of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an application by HM Revenue and Customs (“HMRC”) to strike out the appeal of Dr Vasiliki Raftopoulou against the refusal of her claim for overpayment relief on the grounds that it was made out of time.

2. Following a hearing of the application, on 2 June 2014, a Decision Notice containing a summary of the Tribunal’s findings of facts and reasons for allowing HMRC’s application and striking out Dr Raftopoulou’s appeal was released to the parties on 5 June 2014. On 8 June 2014 an application for permission to appeal to the Tax and Chancery Chamber of the Upper Tribunal against the Tribunal’s decision was received by the Tribunal. However, as it was not possible to read the documents, on 10 June 2014 the Tribunal wrote to Dr Raftopoulou asking for these to be resubmitted. Legible copies of the documents were subsequently received by the Tribunal on 9 July 2014.

3. Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “Procedure Rules”) provides that before an application for permission to appeal can be made it is necessary to request full written findings of fact and reasons for the decision of the Tribunal. As the parties had been provided with a “summary” decision on 5 June 2014 Dr Raftopoulou’s application for permission to appeal has been treated as a request for full written findings of facts and reasons and this decision has been provided to enable her to decide whether to apply for permission to appeal and to assist in formulating any such appeal.

Law

4. Section 9ZA of the Taxes Management Act 1970 (“TMA”) provides:

(1) A person may amend his return under section 8 or 8A of this Act by notice to an officer of the Board.

(2) An amendment may not be made more than twelve months after the filing date.

(3) In this section “the filing date”, in respect of a return for a year of assessment (Year 1), means—

(a) 31st January of Year 2, or

(b) if the notice under section 8 or 8A is given after 31st October of Year 2, the last day of the period of three months beginning with the date of the notice.

5. Under paragraph 1 of schedule 1AB TMA a person “who has paid an amount by way of income tax” who believes that the tax was not due may make a claim to HMRC for repayment. However, paragraph 3 of that schedule provides:

(1) A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.

(2) In relation to a claim made in reliance on paragraph 1(1)(a), the relevant tax year is –

5 (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA of this Act, the tax year to which the return (or, if more than one, the first return) relates, and

(b) otherwise, the tax year in respect of which the payment was made.

There is no statutory provision by which this time limit may be extended.

10 6. Under Rule 8(2) of the Procedure Rules 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.

15 *Facts*

7. Dr Raftopoulou submitted her 2006-07 self-assessment tax return to HMRC on 14 January 2008. In accordance with the figures stated on the return she was required to pay tax in the region of £18,000. Although she believed the amount of tax due was the result of a mistake Dr Raftopoulou did not amend her return within the statutory
20 time limit but made a claim for repayment on 13 October 2011.

8. As this was outside the time limit contained in paragraph 3(1) of schedule 1AB TMA HMRC rejected the repayment claim and notified Dr Raftopoulou of this in a letter dated 9 November 2011.

Discussion and Conclusion

25 9. As Dr Raftopoulou did not amend her 2006-07 return within the 12 months of its filing date the only way she could claim a repayment was under the provisions of schedule 1AB TMA. This required a claim to be made not “more than 4 years after the end of the relevant tax year”.

30 10. The relevant tax year, the tax year to which the return relates in the present case, is 2006-07. Therefore, any claim had to be made by 5 April 2011. Dr Raftopoulou’s claim was made on 13 October 2011. In the absence of any statutory provision to extend or appeal against this time limit it must follow that a claim such as Dr Raftopoulou’s does not fall within the jurisdiction of the Tribunal and as such under Rule 8 of the Procedure Rules I have no alternative but to strike out her case.

35 11. Although Dr Raftopoulou contends that HMRC were aware of the “mistake” in her 2006-07 return before the expiry of the time limit, I am afraid that this can have no bearing on the outcome of this case in the absence of a timely amendment to a tax return or claim for repayment as it is clear from the decision of the Tax and Chancery Chamber of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363(TC), which is

binding on me, that the jurisdiction of this Tribunal, the Tax Chamber of the First-tier Tribunal, does not extend to the power to override a statute or supervise the conduct of HMRC.

Right to Apply for Permission to Appeal

5 12. 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
10 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.

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**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 20 August 2014

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