



TC02782

Appeal number: TC/2012/5738

INCOME TAX – procedure - tax liabilities agreed but dispute over allocation of payments, and whether payments or repayments made or to be made – jurisdiction of Tribunal – Rule 8(2) - Held: no jurisdiction over debt collection dispute relating to agreed tax liabilities – proceedings struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr MICHAEL ASHLEY & Mrs JOAN ASHLEY Appellants

- and -

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

**TRIBUNAL: JUDGE PETER KEMPSTER
MR TERRENCE BAYLISS**

Sitting in public at Cardiff on 11 June 2013

**Mr Terry Dewan (The Dewan Partnership) and Mr Michael Ashley for the
Appellants**

Mr David Glassonbury (HMRC Appeals Unit) for the Respondents

DECISION

1. The sole issue for determination at the hearing was whether there was any matter contained in the notice of appeal that falls within the jurisdiction of the Tribunal.

Background

2. In May 2012 the Appellants filed a notice of appeal which stated:

“This case has been under enquiry with HMRC for many years. All taxation liabilities were agreed between the parties in 2008. The appellants are entitled to interest on overpaid tax and [the Inspector] has agreed to provide calculation of interest due. Despite much correspondence with HMRC they still show that Mrs JA Ashley owes tax of £10,534.64 and Mr MT Ashley owes tax of £15,900.88. Attached is a schedule of payments of tax made by Mr & Mrs Ashley together with supporting evidence of payments made. In summary, Mr & Mrs Ashley are due refunds of tax totalling £53,514.97 plus interest.”

3. On 23 July 2012 the Tribunal wrote to the Appellants’ agent explaining that further details were necessary to identify what matters were being appealed.
4. On 22 October 2012 the Appellants’ agent wrote to the Tribunal stating, “Please find enclosed HMRC’s latest statements issued for both Mr Ashley and Mrs Ashley. ... These balances do not reflect the assessments raised and agreed with HMRC.”
5. On 4 December 2012 the Appellants’ agent wrote to the Tribunal stating, “We have of course previously confirmed that assessments for all years up to and including 5th April 2004 have been agreed with HMRC.”
6. On 22 January 2013 the Tribunal wrote to the Appellants’ agent as follows (“the Registrar’s Letter”):

“Background

After receiving your client’s notice of appeal we wrote to you on 23 July 2012 to advise you that we had not been able to identify from the papers you had sent us any matters over which we have jurisdiction.

Your reply of 6 August 2012 appeared to be a list of agreed liabilities but disputed allocation of payments or credits and thus did not identify any matters over which we appear to have jurisdiction. Your client also sent us a letter dated 17 September 2012 asking us to determine a repayment plus interest and costs.

We wrote to you on 3 October 2012 again explaining that we need you to identify the appealable matter at issue and asking you to provide us with an itemised list of the assessments, Revenue Amendments, surcharge and/or penalty determinations you wish to appeal against, your explanation of why you think the amount charged (not the amount

payable) is wrong and provide us with copies of each decision you wish to appeal against.

5 The list you provided in response is all about payments and their allocation, which is not within our jurisdiction. The copy documents supplied were ‘statements’ not decisions and showed balances owing, which is not within our jurisdiction per se; and statutory interest, which is not appealable.

10 The covering letter dated 22 October 2012 states that the appeal is against the balances brought forward. The papers were seen by a judge and on his instruction we wrote to you on 9 November 2012 to advise that the Tribunal has no jurisdiction to assist with that matter and as a result no further action will be taken in this and the application to appeal has been removed.

15 Thereafter we received your letter dated 4 December 2012 in which you confirm that the assessments are not disputed but the issue is about the allocation of payments. As previously advised, this is not within our jurisdiction.

20 However the final paragraph of your letter of 4 December 2012 is: “We note that the Tribunal have given HMRC until 13th December 2012 to provide full details of the agreement reached between them and [y]our clients...”. I am sorry but to the best of my knowledge, we have not asked HMRC to provide anything in relation to this matter as we do not believe that there is anything here over which we have jurisdiction. Therefore, I do not understand the source of your comments, but for the avoidance of doubt confirm that we have not asked HMRC for any information on this matter.

25 We have also received correspondence from your clients dated 9 December 2012. Your client’s correspondence appears to show a misunderstanding of the Tribunal’s jurisdiction and procedures. There is no general automatic right to costs in this Tribunal. We have not asked HMRC to provide any information or a ‘defence’ as we have not accepted your clients’ appeal.

Complaints

35 We are not part of HMRC and do not have access to any of their records or papers.

You will be aware that the Tribunal does not have a general regulatory oversight of HMRC’s conduct. We may only consider appeals against decisions where the statute provides a right of appeal to this Tribunal.

40 Complaints about HMRC’s policies, processes or the conduct of their staff are not matters over which we have jurisdiction. If you are unhappy with HMRC’s handling of your clients’ affairs then HMRC have a published complaints procedure and if you remain dissatisfied you may be able to refer the matter to the Adjudicator’s Office, see www.Adjudicatorsoffice.gov.uk .

Validity of Notice of Appeal

45 We have not accepted the notice of appeal you have sent to us as a valid appeal as, despite repeated requests you have not identified any

matters in dispute over which we have jurisdiction. Hence, we have not notified your clients' appeal to HMRC nor have we asked HMRC to provide a 'defence' (Statement of Case) or any other documents or information.

5 We have repeatedly asked you to provide us with a list of appealable decisions you wish to appeal against to the Tribunal. The only disputed matters you have referred us to have been the allocation of payments by HMRC to various liabilities. To the best of our understanding, the allocation of payments against your clients' liabilities with HMRC is not a matter within our jurisdiction. If you think we are mistaken, please cite the relevant statute which gives this Tribunal jurisdiction in this matter or provide us with a list of disputed matters and specific details of the legislation which provides a right of appeal to this Tribunal within 28 days.

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15 If we do not hear from you within 28 days we will close our file.
If you identify any appealable matters the appeal will then be notified in the usual way. If your response does not specify any legislation which gives us jurisdiction in this matter or does not identify any appealable decision then we will consider a hearing to consider jurisdiction.

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Costs

Please note that there is no automatic right to costs in this Tribunal even for the successful party and we do not pay either party's expenses of attending a hearing or otherwise."

25 **Submissions at the Hearing**

7. Mr Dewan (the Appellants' agent) confirmed to the Tribunal that all tax years for both Appellants up to and including 2003-04 had been agreed with HMRC. Mr Dewan stated that HMRC had, however, failed to provide paperwork to show how the agreed liabilities had been allocated against amounts of tax paid; what was required was a statement marrying the agreed assessments to the statement of account.

8. Mr Glassonbury for HMRC confirmed that HMRC's files, after enquiry of the relevant Inspector Mr Massey (who was present at the hearing), showed all relevant years as agreed; all items actioned to the self-assessment record; and there were no appeals open. HMRC now understood what Mr Dewan wanted and it should be straightforward to prepare.

9. Mr Ashley submitted that the overriding objective of the Tribunal – to deal with cases fairly and justly (Tribunal Procedure Rule 2) – required the Tribunal to determine the dispute between the parties. Mr Ashley stated that it was clear that there had been overcharges and double-charges of tax and that was all within the jurisdiction of the Tribunal.

Consideration and Conclusions

10. This Tribunal can only consider disputes which fall within its legal jurisdiction, as conferred by specific statutory provisions. As stated by the Upper Tribunal in *HMRC v Hok Ltd* [2013] STC 225:

5 “[36] It is important to bear in mind how the First-tier Tribunal came into being. It was created by s 3(1) of the Tribunals, Courts and Enforcement Act 2007, 'for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act'. It follows that its jurisdiction is derived wholly from statute.”

10 11. Having carefully considered the stated grounds of appeal, the explanations given in correspondence, and the submissions made at the hearing we are satisfied that the dispute between the parties relates to payments and allocations of payments, rather than any dispute concerning the underlying taxation liabilities all of which were agreed between the parties back in 2008. This Tribunal has no general jurisdiction in
15 relation to debt collection disputes between HMRC and taxpayers. There is nothing further we can usefully add to the explanation given in the Registrar’s Letter.

12. Tribunal Procedure Rule 8(2) stipulates that the Tribunal must strike out proceedings if the Tribunal does not have jurisdiction in relation to the proceedings. There being no matter that lies within the jurisdiction of this Tribunal, the appeal
20 cannot be entertained and thus the proceedings must be struck out.

Decision

13. The Tribunal ORDERS that these proceedings are now STRUCK OUT.

14. As we have no jurisdiction in the dispute it would not be appropriate to make any formal directions as to future matters, but we would comment that (as
25 communicated to the parties at the hearing) we consider it would be very helpful, and may completely resolve the dispute, if HMRC produce a schedule analysing how the agreed amended assessments for the tax years 1996-97 to 2003-04 have been actioned and allocated to the Appellants’ statements of account. From the papers we have seen it appears to us that most of the hard work on that task has already been performed.

30 15. This document contains full findings of fact and reasons for the decision and replaces the summary decision notice issued to the parties on 14 June 2013. 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
35 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.

PETER KEMPSTER
TRIBUNAL JUDGE

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RELEASE DATE: 10 July 2013