



TC02866

Appeal number: TC/2011/07908

TRIBUNAL JURISDICTION - form R27 available to personal representatives and others to complete tax refund/liability for a deceased – whether resultant ‘calculation’ an ‘assessment’ – no - tribunal does not have jurisdiction – Rule 8(2)(a) of the Tribunal Procedure Rules (First-tier Tribunal) (Tax Chamber) Rules 2009 - appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR J TAYLOR (DECEASED)

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE DAVID S PORTER
DEREK ROBERTSON**

Sitting in public at Alexandra House, Manchester on 31 July 2013

Mr John Grayson Taylor, personal representative, for the Appellant

Mr Philip Jones instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

Introduction

5 1. Mr John Grayson Taylor (Mr Taylor) is the executor of Mr John Taylor (his father) and wished to advise the Respondents (HMRC) of the tax liability or otherwise arising from his father's death. The return for the year 2008/9 was issued to his father and HMRC wrote to Mr Taylor on 5 August 2009 to ask if he wished to complete the return or whether he preferred a calculation to be issued using the details from form R27. In a letter dated 22 August 2009 Mr Taylor confirmed that he would be content to use Form R27.

2. We do not propose to consider the merits of the arguments as to the contents of the form R27 since we are required only to decide whether the 'calculation' arising from form R27 amounts to an 'assessment' to allow this Tribunal to have jurisdiction to consider an appeal. Much communication has passed between the parties over the last three years and it is unfortunate that HMRC did not initially advise Mr Taylor that he would need to complete a Tax Return if he did not agree HMRC's figures.

3. Form 27 is designed to assist individuals, be they personal representatives, family members or otherwise, to identify a deceased's income, where such information is straightforward. Where the information is more detailed, HMRC usually require the individual concerned to complete a return. We need to set out form R27 and the 'calculation' in some detail so that we can consider the arguments as to whether the 'calculation' arising from it is an 'assessment' and therefore open to appeal. The 'calculation' is set out in the Appendix hereto.

25 The parties

4. Mr Philip Jones an officer form HMRC appeared on behalf of HMRC and produced an agreed bundle of documents and produced some speaking notes. Mr Taylor appeared in person and produced written submissions.

Form R27.

30 5. R27 is in the form of a letter addressed to the personal representative and carries a reference appropriate to the deceased. It appears as follows:-

“The estate of the late.....

I have sent you this form so that I can finalise the tax position up to the date of death. If you are dealing with the deceased's estate please complete this form. If you are not, please give it to the person who is. They will normally be called the personal representative or Executor and may be a solicitor or accountant. **It is important that this form is completed and signed by the personal Representative** and not by an agent or professional adviser acting on their behalf.

COMPLETING THIS FORM

Page 1 You must complete **Details about the estate and period of administration** in every case.

5 **Page 2** You must complete **Details about income and allowances** in every case **unless** you have already sent me a Self Assessment Tax Return or R40 claim form covering the period 6 April to the date of death, or you want to complete one now (*in which case please tick the box at the top of page 2 that applies and I shall send one*). [The italics are ours and are referred to later in this decision]. The details that you give on page 2 will help me work out the final tax liability.

10 **Page 3** It is possible there may be a repayment of tax. To enable me to make the any repayment due, you must complete **Claim to Repayment** in every case unless you have already sent me a Self Assessment tax return or R40 claim form covering the period 6 April to the date of death.

Page 4 You must complete **the Declaration** in every case.

15 You should only complete **Repayment nomination** if you are the person entitled to receive any repayment which may be due, but you want to have the repayment paid direct into your bank or building society account or you want to nominate someone to receive the repayment on your behalf.

Details about the estate and period of administration

20 [We do not propose to supply this information as the form merely has boxes for the appropriate information to be inserted.]

Details about the income and allowances

- 25 • If the deceased normally completed an annual Self Assessment tax return or R40 claim form and you would prefer to complete one of these **now** for the period 6 April to the date of death please tick the appropriate box and I will send you one.
- 30 • If you choose not to fill in a Self Assessment tax return *at this time you may still need to complete one and send it to me after the end of the tax year (5 April) in which death occurred. But to help me to decide and let you know if this will be necessary, please complete the rest of this page and pages 3 and 4.* (Our italics).
- If you decide to complete a Tax return or R40 claim form now **you need only fill in pages 1,3 and 4**
- 35 • If you have already sent me a Tax return or R40 claim form **you need only fill in page 1 and the declaration at page 4 and then send this form back to me**

Income for the period 6 April 200 to (date of death)

Allowances and tax credits for the period 6 April 200 to 9date of death)

Claim to repayment.

5 (There then follow sections and boxes so that all this information can be completed.)

The form finishes with:-

Reasons for claiming Repayment

- I am an executor named in the deceased's will [A]
- I am an administrator named in the letters of administration [B]
- 10 I am the widow/widower/surviving civil partner of the deceased [C]
- I paid all or some of the funeral expenses out of my personal resources [D]
- Other reasons [F]

- If you have ticked only box D and/or Box E you must give the following information

- 15 1. What is your relationship to the deceased?
2. Give names and addresses and relationship to the deceased of all known surviving relatives. *Use a separate sheet of paper if necessary.*
- 20 3. If you ticked box D], who else apart from yourself contributed to the funeral expenses? The estate? [] Someone else? []
4. If they were paid partly by someone else, please enclose a letter form that person confirming that they have no objection to you receiving the repayment due to the estate
- 25 5. If you ticked box E what is the reason for claiming the repayment?
Use a separate sheet of paper if necessary.

There then follows details for the repayment and the form finishes with:-

Declaration

30 **This form is signed by the Personal Representative or Executor of the deceased in every case.** If you are acting on their behalf they can nominate you to receive the repayment due if appropriate (Part1 or Part 2).

- 30 A (3) states that the assessment must include “the time in which any appeal against and assessment must be made”, and
- Section 113 (3) says that HMRC must prescribe the form to be used for an assessment.

5 But neither of these statutory provisions actually defines an assessment.

Section 30A of the Act provides.

(1) Except as otherwise provided, all assessments to tax which are not self - assessments shall be made by an officer of the Board.

10 (2) All income tax which falls to be charged as an assessment which is not a self assessment may, notwithstanding that it was chargeable under more than one [Part or Chapter of ITEPA 2003 or ITTOIA 2005] be included in one assessment.

15 (3) Notice of any such assessment shall be served on the person assessed and shall state the date on which it is issued and the time within which any appeal against the assessment may be made

(4) Assessments to tax which under any provisions in the Taxes Acts are to be made by the Board shall be made in accordance with this section.

Section 31 of the Act Appeals: right of appeal

(1) An appeal may be brought against –

20 (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)

25 (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.

(2).....

(3)

30 (4) This section has effect subject to any express provision in the Taxes Acts, including in particular any provision making one kind of assessment conclusive in an appeal against another kind of assessment.

31A Appeals: notice of appeal

(1) Notice of an appeal under section 31 of this Act must be given-

(a) in writing

(b) within 30 days after the specified date

5 (c) to the relevant officer of the Board.

(2)

(3)

(4) In relation to an appeal under section 31(1) (d) of this Act-

10 (a) the specified date is the date on which the notice of assessment was issued, and (NB none uissued detail provided by appellanT0

(b) the relevant officer of the Board is the officer by whom the notice of assessment was given

(5).....

(6).....

15 **Section 113 of the Act. Form of return and other documents.**

(1) Any returns under the Taxes Acts shall be in such form as the Board prescribe, and in prescribing income tax forms under this subsection the Board shall have regard to the desirability of securing so far as may be possible, that no person shall be required to make more than one return annually of the sources of his income and the amounts derived therefrom.

20

(1A)

(1B)

(1C).....

(1D).....

25 (2).....

(3) Every assessment,[determination of a penalty] duplicate, warrant, notice of assessment [, of determination] or of demand, or other document required to be used in assessing, charging, collecting and levying tax [or determining a penalty] shall be in accordance with the forms prescribed from time to time in that behalf by the Board, and a document in the form prescribed and supplied or approved by them shall be valid and effectual.

30

Section 114. want of form or errors not to invalidate assessments, etc

(1) An assessment [or determination], warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable for want of form, or be affected by reason
5 of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

Section 59 (B) 6 of the Act.

10 59 B (6) Any amount of income tax or capital gains tax which is payable by virtue of an assessment made otherwise than under section 9 of this Act shall, unless otherwise provided, be payable on the day following the end of the period of 30 days beginning with the day on which the notice of assessment is given.

Rule 8 (2) (a) The Tribunal procedure (First-tier) (tax Chamber) Rules 2009 (the Rules)

15 (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 part of them;

The cases

20 8. We have also been referred to two cases:

Robert Clark and The Commissioners for Her Majesty's Revenue and Customs TC01164 in which the Presiding Member, Anne Redston, had to consider, among other matters, whether Mr Clark had the right to appeal a Tax Calculation Notice better known as a P800. She refused the application for a strike out brought by
25 HMRC and adjourned the case for further argument

Prince and others v Revenue and Customs Commissioners [2012] UKFTT 157. This is the leading First-tier Tribunal case in relation to a P800 in which Judge Colin Bishopp, the Chamber President, decided that there was no right to challenge the terms of an extra statutory concession given by the Revenue under the ESC known as
30 A19.

The strike out application

9. Mr Philip Jones (Mr Jones) an officer of HMRC provided us with his speaking notes and submitted that there is no appealable decision even though Mr Taylor said that HMRC's figures are wrong and that his figures should be used. In his letter of 22
35 August 2009, Mr Taylor agreed to deal with his father's tax affairs by means of form R27. As a result, all the calculations giving rise to the proposed repayment have been completed outside of a return.. There has been no enquiry into a Tax Return, nor have

discovery assessments been raised. HMRC has not issued a decision which carries a right of appeal.

5 10. Three calculations were provided arising from the considerable communication between the parties and are set out in paragraph 6 above. These are just calculations and are not assessments. They do not meet the requirements of section 30A of the Act as they do not have a date of issue nor do they specify a time for appealing. The ‘calculations’ are not within the terms of section 113 (3) of the Act as they are not ‘assessment’ made in accordance with the forms prescribed by the Board from time to time.

10 11. Mr Jones submitted that an ‘assessment’ is legally enforceable and a calculation is not. In this instance HMRC has repaid money to Mr Taylor but had it not done so Mr Taylor, relying on the calculation, could not compel HMRC to make the payment. Nor, he submitted, could HMRC engage Debt Management to enforce the debt as it would not be legally due – it has not been ‘assessed’ merely ‘calculated’.

15 12. On 11 November 2011 the Tribunal wrote to Mr Taylor indicating that there did not appear to be a formal decision and that he should write to HMRC to ask it to issue one. HMRC replied to Mr Taylor’s letter on 7 February 2011 somewhat unhelpfully suggesting that;

20 “ an appeal had to be made within 30 days from the notification of the decision, such as the tax calculation or amendment.. As the time limit has expired you can ask us to accept your appeal out of time”.

This letter was incorrect as there was no appealable decision.

25 13. Mr Jones referred us to paragraphs 26 to 30 of the case of *Prince and others v Revenue and Customs Commissioners*. Mr Bishopp observed that the taxpayer was left with a remedy even though he could not appeal the P800 decision. The taxpayer could appeal against a new or amended notice of coding.

30 14. Mr Jones submitted that the same principles apply in this case in that the three calculations are not assessments to tax. If Mr Taylor wishes to appeal the ‘calculation’ he must submitted a return and he can then appeal any the assessment raised by HMRC thereafter.

15. HMRC respectfully asked that the Tribunal rule that there is no appealable decision and that accordingly the proceedings must be “struck out” under Rule 8 (2) (a) of the Rules.

35 16. Mr Taylor provided us with written submissions with regard to his appeal. In those submissions he suggested that the existence of a right to appeal would satisfy the requirements of natural justice and human rights. If HMRC is correct in its contentions then it will be acting ‘intra vires’ when it uses its residual discretion to use informal assessments and thereby bypass a taxpayers right of appeal. This might be seen as a surprising result, given not only the human rights and public law issues, 40 but also the very precise legislation as to when and how HMRC can assess taxpayers,

and the linked appeal rights. After all, assessments and appeals do not sit in the “interstices of the tax legislation” as Lord Hoffman put it in *Wilkinson*, when describing the scope of HMRC’s discretionary powers.

5 17. Mr Taylor submits that it is clearly arguable that the “informal calculation” is an
“assessment” other than under self-assessment, as referred to in section 59 B (6) of
the Act or even under a “discovery assessment” falling within section 29 of the Act..
if the ‘Calculation Notice’ is a notice of an ‘assessment’ it can be appealed under
section 31 of the Act. In the decision of *Prince and others v Revenue and Customs*
10 *Commissioners* Mr Gordon, who appeared as an advocate for the tribunal argued by
contrast that a P800 may well be an assessment, susceptible of appeal in accordance
with section 31 (1) (a) of the Act. He pointed out that the purposes of sections 30A
and 113(3) was to protect the taxpayer from assessments, which did not clearly
indentify themselves as such and should be considered in that light, rather than a
means of preventing appeals and that section 114 (1) of the Act makes it clear that the
15 apparently rigid requirements of form are not, in truth, rigid.

18. Mr Taylor submitted that at first sight it would be unusual if HMRC were correct.
In this case, Mr Taylor does not challenge a calculation of the tax said to be due, but
he asks, what would the position be if he did? There may be a multitude of reasons
why HMRC has miscalculated the tax; by using incorrect figures; by failing to take
20 account of relief or allowances to which the taxpayer is entitled; or by reason of an
arithmetical error; to indentify only obvious examples. No doubt in many cases the
astute taxpayer would write to HMRC with the necessary information or corrections,
and the disagreement would be resolved in correspondence. If there remained a
disagreement it is difficult to accept that the taxpayer would be left without a remedy

25 19. It is at this point that Mr Taylor sees a difference with the calculations for his
father in that it does not lead to an issue of a coding notice, but to a statement of tax
payable or refundable which may be either correct or incorrect. If the amount is
incorrect it is difficult to accept that a taxpayer would be without a remedy. He
submits that the ‘calculation’ is an assessment and is therefore within the jurisdiction
30 and the appeal ought not to be struck out.

The decision.

20. We have considered the law and the facts and we have decided that the
‘calculation’ is not an assessment and that this Tribunal has no jurisdiction to hear the
appeal. Section 30 A (1) of the Act states that:

35 “Except as otherwise provided, all assessments to tax which are not self-
assessments shall be made by an officer of the board....”

Section 30 A (3) of he Act states that:

“the assessment must include “the time in which any appeal against an
assessment must be made..” and

Section 113 (3) of the Act says that HMRC must prescribe the form to be used for an assessment. And that no individual should be required to make more than one annual return.

5 Section 114 of the Act is only of any assistance in allowing an assessment to be accepted as such, if it is obvious that there has been a recognisable error and its substance has not been affected. As a result, Section 114 could only be used in relation to a ‘calculation’ if it is an assessment.

10 21. Whether the ‘calculation is an ‘assessment’ or not can only be considered against the background of the existing law. Form R27 is designed to help personal representatives or administrators to complete a tax return for a deceased. We suspect that in the majority of cases the tax position of a deceased will be straightforward. He or she may only have a state and a private pension and some interest in the form of dividends or bank interest. It is for that reason that the individual is asked whether he or she wishes to put in a Self- Assessment Return or rely on a ‘calculation’ provide by HMRC. The form makes it clear on page 2 that if a Self Assessment Return is to be lodged then the box at the top of the page is to be ticked.

15 21. The form goes on to say under ‘Details about the Estate...’:

- 20 • If you choose not to fill in a Self Assessment tax return *at this time you may still need to complete one and send it to me after the end of the tax year (5 April) in which death occurred. But to help me to decide and let you know if this will be necessary, please complete the rest of this page and pages 3 and 4.* (Our italics).

25 From this note it appears that HMRC can insist on a Self-Assessment Return if it considers that the case warrants it. We are surprised that HMRC did not so decide in view of the 10 private pension arrangements that the deceased had. This is the more so, when it became clear that the certificates relating to the tax position issued by one of the pension providers turned out to be incorrect.

30 22. Form R27 also anticipates that a claim for any tax repayment can, with the consent of the personal representative, who has to sign the form, be paid to the person or persons who paid the funeral account. That person has to confirm, on receiving the repayment, that he or she will repay it, if probate is issued to someone else and the payment may have been made improperly. It seems to us that such a person would be unlikely to know what the tax affairs of the deceased might have been, which gives rise to the possibility that the ‘calculation’ might well be incorrect and unreliable further reducing its potential status as an assessment.

35 23. The ‘calculation’ of the tax repayment has been amended twice from an initial repayment of £1606.38; to a further amount of £141.51; and a final payment of £18.74. As Mr Taylor submitted:

“No doubt in many cases the astute taxpayer would write to HMRC with the necessary information or corrections, and the disagreement would be resolved in correspondence.”

5 Form R27 allows amendments to be made to the ‘calculation’. The ‘calculation’
provided by HMRC does not include the time in which any appeal against the
‘calculation’ must be made, nor is it a form prescribed by HMRC as an assessment as
required by section 30 A (1) of the Act.

24. What is the position under self-assessment? A Self-Assessment Return
contains all the information requested in form R27 and much more. The taxpayer can
10 either him or herself calculate the tax or ask HMRC to do so. As the Return is
completed on line, the software can calculate the tax and HMRC can in all Returns
either accept that the tax has been correctly calculated or disagree. As a result
amendments can be made, as identified by Mr Taylor in relation to the ‘calculation’.
If agreement cannot be reached then HMRC can raise an enquiry under section 9A of
15 the Act. A taxpayer can ask for the enquiry to be closed and if it is HMRC can then
raise an assessment as to the amount of tax it believe should be paid. Otherwise
HMRC may raise an assessment at the end of its enquiry. Up to that point the tax
payer has had no right of appeal. In fact, no appeal can be brought by a taxpayer until
he or she files a Self-Assessment return. In more complex cases, HMRC can make a
20 discovery assessment, which can then be appealed by the taxpayer.

25. We consider that the position under form R27 and the ‘calculation’ must be
the same as under the Self-Assessment regime. As Mr Jones has submitted, a taxpayer
is not without a remedy. His remedy is to put in a Self-Assessment Return, which
would give rise to the same procedures as under Self-Assessment. Form R27 is
25 designed to reduce the amount of work a personal representative or an administrator
needs to do in the simpler case. This is beneficial to both HMRC and the individual.
In most cases, we suspect, a small repayment is generated, as in this appeal. The
completion of a Self-Assessment Return would therefore be an unnecessary burden.
However, the individual does run the risk that there may be some duplication of
30 effort, if they are subsequently obliged to fill in a full return. Form R27 makes this
abundantly clear and the risk of such an outcome lies with the individual.

26. It is unfortunate in this case that HMRC did not insist on a Self –Assessment
return at the outset, given that the deceased had been an accountant and Mr Taylor
tells us that his expertise is in international finance. It is even more unfortunate that it
35 has taken 3 years to get this far. However, we are satisfied that the ‘calculation’ is not
an assessment. Given the Self-Assessment regime, it would be extraordinary if it
were. Form R27 lies easily within that regime and the ‘calculation’ cannot therefore
be an assessment. Mr Taylor is not ‘without a remedy’ he can file a Self-Assessment
Return. We understand that he is not prepared to do that as he alleges that the
40 difference in the repayment is very small.

27. We have come to the conclusion that this Tribunal has no jurisdiction to deal with
an appeal against the ‘calculation’ raised by HMRC and the case is to be Struck Out

under Rule 8(2)(a) of the Tribunal Procedure Rules (First-tier Tribunal) (Tax Chamber) Rules 2009.

5 28. 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 “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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**DAVID S PORTER
TRIBUNAL JUDGE**

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RELEASE DATE: 10th September 2013

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