



**TC04144**

**Appeal number: TC/2011/05802**

*CAPITAL GAINS TAX — Sale of residential property owned by Appellant –  
Claimed expenditure on capital improvements – Appeal refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JULIE B WILLIAMS**

**Appellant**

**- and -**

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

**Respondent**

**TRIBUNAL: JUDGE CHRISTOPHER STAKER  
MR SIMON BIRD**

**Sitting in public in Port Talbot on 12 November 2014**

**No appearance by or on behalf of the Appellant**

**Mr Simon Bates for the Respondent**

## DECISION

### Introduction

1. The Appellant appeals against a closure notice dated 17 January 2008 following an enquiry into her 2005-06 self-assessment tax return. The issue in the appeal  
5 concerns the Appellant's liability to capital gains tax in respect of the disposal of two residential properties, one of which is referred to below as Beverley Street.

### Background

2. The procedural history, in brief, is as follows.

3. The Appellant's notice of appeal was dated 27 July 2011. It appears that on 6  
10 February 2012, the Tribunal granted the Appellant permission to make a late appeal, notwithstanding that it was some 4 years late.

4. At a hearing on 26 June 2012, the substantive hearing of the appeal was postponed, apparently due to a failure of the Appellant's witness to attend. Directions were issued by the Tribunal, in which the Appellant was advised that any failure by  
15 her to provide a witness statement by 31 July 2012 as directed might result in the appeal being struck out.

5. On 16 October 2012, as a result of the Appellant's failure to comply with that direction, the appeal was struck out.

6. On 18 February 2013, on the application of the Appellant, the Tribunal  
20 reinstated the appeal and ordered that it be listed for hearing.

7. A hearing was then held on 14 August 2013, but at that hearing the Tribunal again directed that the substantive hearing of the appeal be postponed to enable the Appellant to provide evidence of claimed capital improvements to Beverley Street. The direction indicated that failure by the Appellant to provide such evidence by 30  
25 September 2013 might result in the appeal being struck out.

8. On 4 October 2013, which was in fact after the stipulated deadline, the Appellant e-mailed to the Tribunal a copy of an invoice dated 13 December 2004 issued by Wales & West Builders for the sum of £10,700. It is apparent from the invoice that it relates to building works. However, the invoice does not indicate the  
30 person to whom it is issued, or the property where the building works in question were undertaken.

9. By a letter dated 8 January 2014, HMRC indicated that its position was that the invoice was in all probability false, and that HMRC intended to call a witness at the hearing to establish this.

35 10. A hearing was then held on 12 February 2014. As at the 26 June 2012 and 14 August 2013 hearings, the Appellant did not attend this hearing, but Mr P Maloney, who the Tribunal understands is the Appellant's partner, appeared on her behalf. At

that hearing, it was agreed between the parties that the only remaining issue in this appeal is the Appellant's claim for £10,700 paid to Wales & West Builders. However, yet again, the substantive hearing of the appeal did not proceed. Rather, it was stayed until 7 May 2014 to enable the Appellant to obtain further evidence of the claimed payment to Wales & West Builders for capital improvements. Directions were issued which provided, amongst other matters, that "The Appellant shall serve on HMRC any additional evidence on which the Appellant wishes to rely as soon as the Appellant obtains it". Those directions also provided that if the matter was not settled it would be relisted for hearing after 7 May 2014.

10 **The hearing**

11. The appeal was listed for substantive hearing on 12 November 2014 in Port Talbot. Mr Bates appeared on behalf of HMRC. There was no appearance by or on behalf of the Appellant.

12. The Tribunal requested the clerk to telephone the Appellant on the number given in her notice of appeal form. The clerk informed the Tribunal that the number was not available. The Tribunal noted that there were on the case file letters from HMCTS to both the Appellant and Mr Maloney dated 2 September 2014, informing them of the date, time and place of the hearing. The letter addressed to Mr Maloney was addressed to the address given by the Appellant on her notice of appeal form. The letter addressed to the Appellant was addressed to the same address, save that the street number was omitted. The Tribunal clerk advised the Tribunal that she had confirmed with the Tribunals Service that the letter to the Appellant had not been returned undelivered.

13. The Tribunal informed Mr Bates of this. Mr Bates advised the Tribunal that no further evidence had been served on HMRC by the Appellant since the 12 February 2014 hearing. Mr Bates submitted on behalf of HMRC that the Tribunal should in the circumstances proceed with the appeal in the Appellant's absence pursuant to rule 33 of the Tribunal's Rules.

14. The Tribunal considered that reasonable steps had been taken to notify the Appellant of the hearing. Although there was an error in the address in the letter addressed to the Appellant (in that the street number was omitted), the Tribunal was satisfied that there was no reason why the notice of hearing correctly addressed to Mr Maloney would not have reached him at the same address, who had attended Tribunal hearings on behalf of the Appellant in the past. Furthermore, the letter to the Appellant was not returned undelivered, and it therefore seems likely that this was also delivered to the Appellant's address, even assuming that the envelope containing that letter had the same error in the address as that appearing in the letter itself. The Tribunal was satisfied that the requirement of Rule 33(a) was met.

15. For purposes of Rule 33(b), the Tribunal was also satisfied that it was in the interests of justice to proceed with the hearing, having regard to the following. The Appellant had not given any indication that she did not intend to attend the hearing and had not sought any adjournment or postponement. The Appellant therefore might

not attend the hearing even if the matter were adjourned or postponed. Mr Bates was present and had prepared for the hearing. The hearing had been postponed in the past to enable the Appellant to obtain further evidence, yet she had not served any further evidence on HMRC as required by the direction issued following the 14 February 2014 hearing. It thus appeared that the Appellant had no further evidence. Unnecessary adjournments or postponements on the day of hearing are inconsistent with the public interest in judicial efficiency. Rule 38 of the Rules makes provision for a decision of the Tribunal to be set aside in circumstances where the appellant or her representative were not present at the hearing, if it is in the interests of justice to do so (Rule 38(2)(d)). The Tribunal accordingly proceeded with the hearing.

### **The HMRC submissions**

16. On behalf of HMRC, Mr Bates submitted as follows.
17. The burden of proof is on the Appellant to establish the claimed expenditure on capital improvements, on a balance of probability.
18. The Appellant has not served any additional evidence. The sole evidence of the claimed expenditure is the invoice from Wales & West Builders. The invoice is in all probability false, but in any event, it is insufficient of itself to discharge the Appellant's burden of proof. It does not state who is the addressee of the invoice. It does not indicate the property where the works were undertaken. The claimed capital expenditure was not mentioned by the Appellant until 2013, some 5 years after the closure notice, notwithstanding that the claimed expenditure is a very significant amount.
19. Mr Bates made a number of additional points in support of the argument that the invoice is in all probability false.
20. Mr Bates submitted that the appeal should be dismissed.

### **The Tribunal's findings**

21. The Tribunal finds that the burden of proof is on the Appellant to establish the claimed expenditure on capital improvements, on a balance of probability.
22. Even if it were accepted that the invoice is genuine, and that it relates to building works that were actually undertaken, it is simply insufficient to establish the Appellant's case in this appeal. This is because it does not state who is the addressee of the invoice, or the property where the works to which it relates were undertaken.
23. There is no other evidence in support of the appeal. In particular, given the non-attendance by the Appellant, there has been no witness evidence in support of the Appellant's case.
24. The Appellant has therefore not established that the claimed expenditure on capital improvements was in fact incurred.

25. The Tribunal finds that in the circumstances it does not need to consider any of the other arguments made on behalf of HMRC, and the Tribunal reaches no conclusion on those other arguments.

**Conclusion**

5 26. For the reasons above, the appeal is dismissed.

27. 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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**DR CHRISTOPHER STAKER  
TRIBUNAL JUDGE**

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**RELEASE DATE: 19 November 2014**