



TC04884

Appeal number: TC/2015/00476

SELF ASSESSMENT – repayment of tax not received by taxpayer

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr Ionel Tanasa

Appellant

- and -

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

TRIBUNAL: JUDGE Rachel Mainwaring-Taylor

Sitting in public at The Royal Courts of Justice, London on 24th November 2015

**The Appellant appeared in person, assisted by his accountant Diana Rate of
Barclay Accountancy Services Ltd**

**Mr Neil Nagle, presenting officer of HM Revenue and Customs, for the
Respondents**

DECISION

1. Mr Tanasa made a closure application on 12th January 2015 concerning a repayment, in the amount of £2,379.65 for the year ending 5th April 2012, which Mr Tanasa did not receive. Mr Tanasa contends that the repayment was fraudulently made to someone other than him. It appeared that Mr Tanasa's former accountant, who was his registered agent at the time the relevant return was submitted and repayment made, may have altered the payment instructions in relation to that return without Mr Tanasa's authority. Whilst the Tribunal sympathised with Mr Tanasa's position, it had no jurisdiction in the matter brought before it. The application was therefore struck out under Rule 8 of the Tribunal Procedure (FTT) (Tax Chamber) Rules 2009.

Background and facts

2. Mr Tanasa's 2011/12 self assessment tax return was submitted to HMRC electronically on 16th April 2012 and was processed by HMRC on the same day. The tax return showed that Mr Tanasa had overpaid tax of £2,379.65 and provided details of his bank account and did not tick the box directing the repayment to be made to a nominee.

3. On 18th April 2012 the Mr Tanasa's self assessment tax return was amended to show different bank account details, but still showed Mr Tanasa's name, and the nominee details were not completed.

4. On 19th April 2012 Mr Tanasa's self assessment tax return was amended again, to show that the repayment should be made to a nominee.

5. On 20th April 2012 the repayment of £2,379.65 was issued.

6. On 12th June 2012 Mr Tanasa's advisors (now Barclay Accountancy Services Ltd) wrote to HMRC advising that their client had not received the repayment due of £2,379.65.

7. On 14th March 2013 HMRC issued a notice under section 9A Taxes Management Act 1970 advising Mr Tanasa that it was opening a check into the self assessment return for the year 2011/12, checking the self-employment income and CIS deductions claimed in the return. The notice also stated a discrepancy of £960 in the amount of CIS deductions claimed.

8. On 20th March 2013 Mr Tanasa's advisors wrote to HMRC agreeing that £960 of CIS deductions had been claimed incorrectly.

9. On 4th April 2013 HMRC issued a notice under section 28A(1) and (2) Taxes Management Act 1970 advising Mr Tanasa that the outcome of the check was that additional tax of £1,592 was due for the year 2011/12.

10. On 12th January 2015 an application to close an enquiry was made to the First Tier Tribunal. The application stated that Mr Tanasa was due a repayment of £2,379.65, that he did not receive this repayment and that it was made fraudulently to a nominee without his authority. With application were enclosed copies of Mr Tanasa's letters of complaint to HMRC and his report to the police on this matter.

11. Mr Tanasa relied on his then accountant, Mr Octavian Bejan, in the submission of his 2011/12 tax return and believes Mr Bejan may have changed the repayment details without his authority. He raised the matter of the missing repayment with Mr Bejan, but was told that 'these things happen'.

12. Mr Tanasa does not dispute HMRC's calculations of the tax due for the year 2011/12. In making his application he was seeking some kind of redress in relation to the repayment he had not received. He described this application as his last resort, saying he did not know what else to do.

Relevant legislation, case law and brief discussion

13. Under section 31 Taxes Management Act 1970, an appeal may be brought against any conclusion stated or amendment made by a closure notice under section 28A or 28B of the same Act.

14. However, Mr Tanasa was not appealing against HMRC's conclusion to the check into his 2011/12 return. Mr Tanasa was seeking to complain about the situation he found himself in, where the repayment of tax had been made in accordance with the amended return received by HMRC on 19th April 2012, but without his actual authority, and which he had not received.

15. HMRC contended that the Tribunal had no jurisdiction over complaints about the behaviour of HMRC's officers, citing Judge Redston's comments to this effect in the case of *HMRC v Christine Perrin (2014) UKFTT 488 TC 03614* at paragraph 200. In fact Mr Tanasa was not seeking to complain about the conduct of particular HMRC officers.

16. Under Rule 8 of the Tribunal Procedure (FTT) (Tax Chamber) Rules 2009:

"the Tribunal must strike out the whole or a part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them".

Conclusions

17. The application before the Tribunal today was on the face of it an application to close an enquiry. However, there was no open enquiry. The check into the 2011/12 tax return had already been closed. Furthermore, its conclusions were not in dispute.

18. Mr Tanasa's actual complaint was about the repayment made by HMRC on 20th April 2012 which he did not receive. The Tribunal had no jurisdiction in this matter. Mr Tanasa may be able to seek redress against his former accountant through a

complaint to the relevant regulatory body or ombudsman or in a claim in another court. Alternatively, he may be able to make a formal complaint against HMRC if he believed they had acted improperly. However, the Tribunal could not advise Mr Tanasa in these matters and he should discuss them with his advisors.

5 19. The application was struck out.

20. 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.

15 **RACHEL MAINWARING-TAYLOR**
TRIBUNAL JUDGE

RELEASE DATE: 15 FEBRUARY 2016

20