



**TC05173**

**Appeal number: TC/2016/00248**

*Income tax - s 370 TMA 1970 - tax due on interest received in respect of delayed payment of monies due under a critical illness policy - whether payment should be apportioned over the period for which it was calculated - no - the payment is taxable as a single payment in the tax year received*  
*Procedure - s 8(2)(a) Tribunal Rules - whether HMRC had issued a decision that attracted a right of appeal - no - appeal struck out*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER COLUM KELLY**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL**

**Sitting in public at Alexandra House, Parsonage Gardens, Manchester on 2 June  
2016**

**Mr Christopher Colum Kelly, the Appellant by telephone conference call**

**Mrs Susan Murray Pritchard, Officer of HM Revenue and Customs for the  
Respondents**

## DECISION

### **The Appeal**

1. This is an application by Mr Christopher Colum Kelly (“the Appellant”) received by the Tribunal as an appeal on 12 January 2016 requesting a repayment by HMRC of tax deducted at source on interest paid to him in respect of the late payment of monies due under three critical illness policies. The interest was paid in the 2015-16 tax year.

2. HMRC assert that there has been no appealable decision within the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and request a strike out of the appeal under Rule 8 (2)(a) Tribunal Procedure Rules.

### **Background**

3. The Appellant made a claim for permanent and total disability benefit under three life and critical illness insurance policies held with Legal & General Assurance Co (“L & G”) in October 2006. The Appellant says that benefits due under the policies fell due on 1 August 2007. L & G declined his claim. Because of a dispute with L & G as to whether benefits were payable under the policies, he did not receive payment until mid-2015.

4. He was forced to raise that matter with the Financial Ombudsman Service. On 12 May 2015, his complaint was upheld when he received a capital lump sum, together with interest. The interest totalled £34,198.20.

5. The monies payable to the Appellant were taxed at 20%, and the sum of £8,778.02 was deducted at source by L & G and paid to HMRC.

### **The Appellant’s case**

6. The Appellant asserts that the interest accumulated over a period of years between 1 August 2007 and 12 May 2015 and therefore should have been apportioned on a yearly basis back to 1 August 2007 and tax calculated accordingly. He asserts that the interest should not have been taxed as a one off payment as it was in the year 2015-16.

7. He says that if the interest had been apportioned and taxed on a yearly basis, no tax would have fallen due, as in each year the interest would have been less than his annual personal allowance.

8. Alternatively, the Appellant says that the interest should have been apportioned on a year by year basis from 28 June 2011, being the date of the Ombudsman’s conclusion that L & G should pay interest on the late payment, to 20 May 2015, being the date of actual payment and the years prior to 28 June 2011 calculated and taxed as one lump sum.

9. The Appellant asserts that effectively there was an in principle agreement in place from 28 June 2011 that should medical evidence eventually support his claim, L & G would pay out the policies and backdate the interest payable.

5 10. The Appellant was unable to attend the hearing but put forward his representations by a pre-arranged conference call.

### **HMRC's submissions**

10 11. Mrs Murray Pritchard for HMRC argued that the Appellant had not provided any evidence that HMRC had issued a decision which attracted a right of appeal. She said that the Appellant had not appealed against any amendment to a self-assessment, any conclusion stated or amendment made by closure notice or any assessment to tax which is not a self-assessment and therefore there was no appealable decision.

15 12. Mrs Murray Pritchard submitted that the interest cannot be backdated as the liability of L & G to pay accumulated interest and the Appellant's right to receive the monies only arose only when the Appellant's claim was upheld, which was in the year 2015-16.

20 13. The payment made to the Appellant by L & G as directed by the Financial Ombudsman was capital. The interest paid as part of that direction was income. Interest is taxable when it arises. The legislation covering this is contained in s 370 ITTOIA 2005. The legislation provides that tax is charged on the full amount of the interest arising in the tax year. Interest arises when it is received or made available to the recipient.

14. Mrs Murray Pritchard says that the interest arose during the tax year 2015-16 and has been correctly taxed in 2015-16. The Appellant should submit a self-assessment tax return for 2015-16 at which point any issues arising can be addressed.

25 15. HMRC therefore ask that the Tribunal to strike out the proceedings under Rule 8(2)(a) of the Tribunal Procedure (First tier)(Tax Chamber) Rules 2009.

### **Relevant Legislation**

ITTOIA Act 2005

*Income charged*

30 S 370 (1) Tax is charged under this Chapter on the full amount of the interest arising in the tax year.

TMA 1070

S31 (1) An appeal may be brought against-

- 5
- (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 29A or 28B of this Act (amendment by Revenue on completion of enquiry into return)
  - (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 of tax which is not a self-assessment.

10 (2) [If] an appeal under subsection (1)(a) above against an amendment of a self-assessment [is] made whilst an enquiry is in progress [none of the steps mentioned in section 49A (2)(a) to (c) may be taken in relation to the appeal] until the enquiry has been completed.

(3) ....

15 (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.

The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273 (L.1))

*Striking out a party's case*

- 20 8 (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 that part of them;

25 **Conclusion**

16. I agree with HMRC that they have not issued a decision that attracts a right of appeal. Consequently this Tribunal does not have jurisdiction in relation to the proceedings. It follows that the 'appeal' must be struck out.

30 17. At the hearing it was explained to the Appellant that he should submit a self-assessment tax return for 2015-16, at which point any issues arising can be addressed. He could also make a claim to HMRC for overpaid tax if he believed that to be the case. If HMRC declined his claim he could then appeal that decision, but he should consider the provisions of s 370 ITTOI Act 2005 which makes it clear that interest is taxed on the full amount arising in the year of receipt.

35 18. For the above reasons the Appeal is struck out.

19. 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.

**MICHAEL CONNELL**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 14 June 2016**