



TC05313

Appeal number: TC/2016/01016

INCOME TAX – whether Notice of Appeal notified any appeals within the Tribunal’s jurisdiction – 8 “decisions” by HMRC not appealable to HMRC and so not to Tribunal – 21 decisions appealable to HMRC but not appealed, so not capable of being notified to Tribunal – 5 decisions appealed to HMRC but appeals notified to Tribunal over a year late – these 5 decisions to be listed for appellant to seek permission to notify late.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BARRY GRAVES

Appellant

- and -

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

TRIBUNAL: JUDGE RICHARD THOMAS

Sitting in public at City Exchange, Leeds on 3 August 2016

Mr Barry Graves in person

Mr Alan Hall, Presenting Officer, for the Respondents

DECISION

1. This was a case management hearing arranged for the purpose of determining what if any appeals had been made by Mr Graves that it was possible for the Tribunal to adjudicate on, and to give directions (if there were any). I decided that certain of Mr Graves's purported notifications of appeals should be treated as applications for permission to notify appeals late, and that there were no other purported notifications of appeals over which the Tribunal had jurisdiction. I made directions for hearing the permission applications.

Background

2. In a Notice of Appeal form received by the Tribunal in February 2016, Mr Graves purported to notify appeals to the Tribunal. In an entry in a box in that Notice of Appeal he showed 6 January 2016 as the date of the HMRC decision he was appealing against. He attached a copy of a letter of that date, heavily annotated by him. That letter contained details of the total amount of tax (together with interest, surcharges and penalties) that HMRC were pursuing in the County Court. And in that letter Mr Graves had been informed by a Mr Doherty, an officer of HMRC's Debt Management and Banking Office ("DMB") who had conduct of County Court proceedings against Mr Graves, that "if you wish to further dispute the Assessments the procedure now would be to make an appeal to the First Tier Tribunal. As you have advised that you have no computer access I have printed off for you're [sic] the form required to make an appeal to the Tribunal along with Guidance Notes on completing the form."

3. As well as the Notice of Appeal Form and the letter of 6 January 2016, Mr Graves also sent in copies of two tax returns, for the tax years 2006-07 and 2007-08. (These return forms had been given to him by Mr Doherty so that he could make a claim to "Special Relief"). All of these documents were copiously annotated by Mr Graves with accounts of his complaints and other dealings with HMRC (and before it Inland Revenue) as well as with DWP's Pension Service and the Revenue Adjudicator. What the Notice of Appeal form did not contain was any clear description of the matters against which Mr Graves wished to appeal or any reasons why appeals were notified late or any reasons for any delay.

4. The Tribunal therefore sought help from Mr Graves, though none was forthcoming. HMRC's Appeals and Reviews Unit, in the person of Mr Alan Hall, wrote to Mr Graves and to the Tribunal about the case and made valuable suggestions to the Tribunal as to how the case might proceed. He produced a schedule of all the matters for which proceedings were being taken in the County Court, covering the tax years 2001-02 to 2010-11 (after that year Mr Graves was removed from the self-assessment system). He showed that the total of the amounts on his schedule equalled the amounts shown in the letter of 6 January 2016, the alleged disputed decision of HMRC. He also gave the Tribunal a copy of a Report by the Revenue Adjudicator

dated 23 June 2014 which also dealt with these years in more detail and gave information about Mr Graves's tax affairs for the years 1979-80 to 2000-01.

5 5. The Tribunal decided that the best way forward would be to have a case management hearing, the main purpose of which was to decide if there were any appeals notified that fell within the jurisdiction of the Tribunal, and if so to make directions accordingly.

10 6. This decision then deals with the outcome of the case management hearing. Mr Graves represented himself. HMRC was represented by Mr Hall. I wish to put on record what I said to Mr Hall at the hearing. I consider that his conduct of the case both before and during the hearing was exemplary. It is clear to me, as it must be to everyone who deals with him in relation to tax and similar matters, that Mr Graves can be a difficult person to deal with. He seems unable to distinguish, not only between various branches of HMRC, but also between the Tribunal and the County Court and between HMRC, the Tribunal and the Adjudicator. He assumes that every person he deals with will have a full comprehension of his case and possession of the, in his words, 350 letters he has written in recent years to HMRC. Mr Hall has done his best to try to show Mr Graves what he must do if he is to get any satisfaction at all from his claims.

The hearing

20 7. I decided to proceed by way of examination of the schedule Mr Hall had provided. This contained a detailed made up by tax year and type of debt of everything that was said by HMRC to be due in the County Court proceedings. By implication it was a list of all the decisions that Mr Graves was notifying his appeals against and I treated it as such. It contained dates on when the amounts became due and when the appeal deadline was. The schedule also contained notes made by Mr Hall for the benefit of Mr Graves and the Tribunal. In the first instance I asked Mr Hall to address me and I questioned him. I asked Mr Graves to remain quiet during this part of the proceedings, and to seek my permission if wanted to raise a point. I made it clear to Mr Graves that he would be able to say what he wanted after I had heard Mr Hall. Mr Graves was unable to resist arguing with Mr Hall or commenting to me (and occasionally arguing with me).

8. The years fall naturally into groups and so I consider those groups as a whole.

1978-79 to 2000-01

35 9. These years are not covered in the letter of 6 January 2016, the letter Mr Graves identified as the decision letter, or in Mr Hall's schedule. However as Mr Graves had mentioned these years in the Notice of Appeal and other documents I decided to consider them and Mr Hall was prepared to deal with them.

40 10. Mr Hall pointed me to the Adjudicator's Report as she had considered Mr Graves's complaints about these years. From that Report it is clear that Mr Graves had complained to her that HMRC had refused to make repayments to him that he

considered he was owed. The adjudicator referred to the statutory time limits for claims and said that she had found no evidence that Mr Graves had made repayment claims within the time limits for any of the years in question, and she said she was satisfied that HMRC were correct to refuse the repayment requests.

- 5 11. That is not of course a statement that is binding on the Tribunal. But I am satisfied that the Notice of Appeal taken with the documents attached to it does not begin to formulate appeals against HMRC's refusal to make repayments for these years.

2001-02 to 2005-06

10 (a) *Assessments to tax*

12. For these years there are assessments made on Mr Graves under s 29 Taxes Management Act 1970 ("discovery assessments") which were made more than six years after the end of each relevant tax year. It follows from that that in order to make valid assessments HMRC must have come to the view that tax had been lost by reason
15 of Mr Graves's neglect or worse.

13. Mr Hall said that the assessments had been raised as a result of an investigation into Mr Graves's affairs arising from the receipt by HMRC of information that Mr Graves had an account or accounts in the Channel Islands in which in 2003 there was approximately £200,000. The assessment for one year had shown an exact figure for
20 interest based on this information, while the assessments for other years were estimated. Mr Graves gave us some information about these accounts (something he had clearly failed to do with HMRC) about the source of the money and its destination.

14. It is clear from HMRC letters that Mr Hall produced that HMRC had accepted
25 that correspondence from Mr Graves in 2013 amounted to appeals against the assessments and that Mr Graves had been offered (more than once) the choice of having a review (under the provisions in sections 49A to 49I Taxes Management Act 1970 ("TMA)) or notifying his appeal to the Tribunal, either action to be performed within 30 days of the date of the HMRC letters.

- 30 15. There was no response to these letters and particularly the last one in May 2014. Certainly no notifications of appeals had been sent to the Tribunal, and no review had been carried out. (Even if one had in fact been carried out and had upheld the original decision to assess, a time limit of 30 days from the date of the review conclusion would have applied for any notification to the Tribunal).

- 35 16. I agree with Mr Hall that Mr Graves is, in 2016, getting on for two years late in notifying the appeals to the Tribunal. I accept that in his Notice of Appeal to the Tribunal, by referring to the "decision" letter of 6 January, Mr Graves is seeking to bring appeals against the assessments to the Tribunal. Indeed this is what Mr Doherty advised him to do in that 6 January letter.

17. However s 49H(3) TMA requires that before a valid notification to the Tribunal can be given after the “acceptance period” the Tribunal must give permission. The acceptance period is the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question. The
5 Notice of Appeal is clearly many months after the end of the acceptance period.

18. I accept though that by his Notice of Appeal Mr Graves is requesting permission from the Tribunal to notify his appeals against the s 29 assessments for these five years to the Tribunal. This application should be heard and I have made directions accordingly.

10 19. I should add that when I informed Mr Hall that this is what I proposed to do and tried to explain it to Mr Graves, he seemed to think that I was finding against him and protested vigorously and intemperately, seeking to shout me down. After I had threatened to have Mr Graves removed from the hearing he calmed down and both Mr Hall and I tried to explain to him that he had succeeded in getting a hearing for
15 permission to take his case forward.

20. Mr Hall explained that HMRC’s entire focus in these years was on the Channel Islands accounts. If Mr Graves would supply proper information in the form of eg statements or letters from the bank and other information as to the destination of the funds when withdrawn from the accounts then it was quite possible that an agreement
20 could be reached which would compromise or extinguish the tax liabilities for these years. Mr Hall suggested that my directions for a permission hearing should require Mr Graves to produce any relevant information, as it might for example indicate to the judge dealing with the permission hearing whether or not Mr Graves’s appeal, if admitted, stood any chance of succeeding (and might of course obviate the need for a
25 hearing).

21. On reflection I consider that to make such a direction in relation to a permission application is premature. The relevance of the merits of an appeal to the question of whether permission to notify late should be granted has receded in importance in recent years.

30 22. From the papers, particularly the Adjudicator’s report, it seems that Mr Graves had complained about the tax treatment of his state pension and a pension from the Greater Manchester Pension Fund (“GMPF”).

23. It appears that for reasons that are not fully clear Mr Graves did not receive his state pension for many years after he became initially entitled to claim it. And there is
35 a suggestion in some correspondence I was shown that for at least some of the time he may not have been entitled to it. He has nevertheless been taxed on the full amount. This is said to be because of the effect of ss 578 and 579 Income Tax (Earnings and Pensions) Act 2003. I consider that there could be an argument for considering whether in these years Mr Graves was in fact not entitled to the state pension for any
40 period, and so not liable to be charged to tax on it. This is I consider a matter which could be taken into account in any permission hearing (for example in considering

what the prejudice to Mr Graves might be were permission not to be granted) or by any consideration by HMRC of a compromise or settlement.

24. As to the GMPF pension it appears that Mr Graves was initially overpaid both a tax free lump sum and taxable pension, and that deductions have been made to recover the overpayments. Again it is possible there is an argument that he should not have been taxed on amounts without taking the reductions into account if that is what actually happened. I say no more but again I consider it is a matter which could be taken into account in any permission hearing or by any consideration by HMRC of a compromise or settlement.

10 (b) *Surcharges*

25. For each of these years there are also surcharges under s 59C TMA outstanding. Although there are no appeals against those surcharges, Mr Hall said that as they were tax related they would be amended should Mr Graves go to appeal and succeed to any extent.

15 26. But as Mr Graves has identified as the decision appealed against the whole of the 6 January letter, I have to consider whether the Notice of Appeal includes a valid appeal against the surcharge. I consider it does not. Although the form Mr Graves completed is headed “Notice of Appeal”, it goes on to say that it is a form to be used “to make *or notify* an appeal”. The reason for this distinction lies in the different procedures for dealing with appeals that apply on the one hand to direct taxes such as income tax and on the other to indirect taxes such as VAT.

27. In income tax (as well as CGT, corporation tax and other taxes) an appeal is to be give in the first instance to the relevant officer of HMRC (see s 31A(1)(c) TMA). Only after the appeal is validly given to the officer of HMRC (that is, it is in time, or accepted by HMRC or the Tribunal if out of time) does an appellants have a right to notify an appeal to the Tribunal, giving the Tribunal jurisdiction to decide the appeal.

28. By s 59C(7) TMA an appeal may be made against a surcharge, and by s 59C(8) TMA the provisions of TMA applying to appeals against assessments apply to an appeal against a surcharge.

30 29. Where there was no appeal given to HMRC as is the case for the surcharges here there can be no notification of an appeal to the Tribunal.

30. In my view the fact that Mr Graves had identified the letter of 6 January 2016 as the decision letter does not help him. Where a person like Mr Graves wishes to notify an appeal he must send a Notice of Appeal to the Tribunal. This he has done. The notice of appeal must give details of the decision appealed against and the grounds for making the appeal. All of this is in Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the FTT Rules”). Further if the notice of appeal is provided after the end of any period specified in the enactment giving the appeal rights then the notice of appeal must request the permission of the Tribunal and the reason for the lateness.

31. What Mr Graves must be able to do is to identify a relevant appealable decision and an appeal against to HMRC. This he has, with Mr Hall's assistance, been able to do in relation to the five s 29 assessments.

5 32. But he cannot point to any appeal that has been given to HMRC in relation to the surcharges and there is no basis on which he can notify an appeal to the Tribunal.

10 33. The Notice of Appeal therefore simply does not include a notification of appeals against the surcharges. The Tribunal is only permitted, under Rule 20 of the FTT Rules, to admit an appeal if it is an appeal made under an enactment. In the case of a surcharge this means an appeal under s 59C(7) TMA but no such appeal has been made. The Tribunal is simply not seised of any appeal against the surcharges and there is nothing it need do about the matter.

2006-07 and 2007-08

(a) Determinations

15 34. For these two years there are determinations under s 28C TMA. Mr Hall submitted that such determinations are not appealable, and can only be displaced by the supply of tax returns. While Mr Graves had purported to submit tax returns for these years they had not contained any meaningful information or figures.

20 35. I agree that there is no right of appeal to HMRC, and thence to this Tribunal against a s 28C determination. Whether Mr Graves had submitted tax returns in a manner that would allow the determinations to be displaced is a matter for HMRC's discretion and not one that the Tribunal has jurisdiction over.

25 36. I therefore hold that since there can be no appeal against the s 28C determinations, that the letter of 6 January 2016 and other documents contain no appealable decision in relation to the determinations and that Mr Graves cannot be said to have notified any appeal under any enactment as required by Rule 20(1) of the FTT Rules. There is nothing that the Tribunal can admit as an appeal and nothing that it need do about the matter.

30 37. In this connection I add that Mr Hall has stated again that which Mr Doherty had mentioned, that where determinations have been made and not superseded, there can be available what HMRC call "Special Relief." This is the relief given in paragraph 3A Schedule 1AB TMA and which replaced a previous practice known as "Equitable Liability". These reliefs were and are administered by the Enforcement & Insolvency sections of HMRC. It is a condition of the relief that a person's tax affairs must be up to date. Mr Hall said that this condition would be met if Mr Graves supplied the figures that should have gone in tax returns for the two years. To assist Mr Graves Mr Hall handed Mr Graves in my presence blank tax return forms and guides to their completion for the two years. It is to be noted that claims made under paragraph 3A may cover years before it was enacted.

(b) *Surcharges*

38. There are surcharges under s 59C TMA imposed for each of the years. What I have said in §33 applies to the surcharges in these years. The Tribunal is simply not seised of any appeal against the surcharges and there is nothing it need do about the matter.

(c) *Penalties*

39. There are also penalties charged in these years in determinations under s 93 TMA. By s 100B(1) TMA an appeal may be made against a penalty determination, and by that same subsection the provisions of TMA applying to assessments apply to an appeal against a penalty determination.

40. There is no trace in the papers of appeals against these determinations. It follows for the reasons given in §33 in relation to surcharges, that the Notice of Appeal therefore simply does not include a notification of any appeal under an enactment against the penalty determinations. The Tribunal is simply not seised of any appeal against the penalties and there is nothing it need do about the matter.

(d) *Payments on account*

41. There are also payments on account of income tax charged by the determinations outstanding and included in the amounts in the 6 January letter. Payments on account are simply instalments of income tax which will subsequently be in some way assessed or determined. There is no right of appeal against a payment on account. An application to reduce or extinguish a payment may in some circumstances be made, but the time for making such an application is long passed.

42. I therefore hold that since there can be no appeal against a payment on account determined automatically under s 59A TMA, that the letter of 6 January 2016 and other documents contain no appealable decision in relation to the payments on account and that Mr Graves cannot be said to have notified any appeal under any enactment as required by Rule 20(1) of the FTT Rules. There is nothing that the Tribunal can admit as an appeal and nothing that it need do about the matter.

2008-09 to 2010-11

(a) *Surcharges and penalties*

43. In these three years there are in the amounts mentioned in the letter of 6 January 2016 payments on account and penalties determined under s 93 TMA.

44. For the reasons given in §§41 and 42 I therefore hold that since there can be no appeal against a payment on account determined automatically under s 59A TMA, that the letter of 6 January 2016 and other documents contain no appealable decision in relation to the payments on account and that Mr Graves cannot be said to have notified any appeal under any enactment as required by Rule 20(1) of the FTT Rules.

There is nothing that the Tribunal can admit as an appeal and nothing that it need do about the matter.

45. There is no trace in the papers of appeals against the penalty determinations. It follows as in §40 that the Notice of Appeal therefore simply does not include a notification of any appeal under an enactment against the penalty determinations. The Tribunal is simply not seised of any appeal against the penalties and there is nothing it need do about the matter.

(b) Balancing payments

46. For 2009-10 and 2010-11 there are what are described as “balancing payments” in the amounts shown in the letter of 6 January 2016.

47. A balancing payment is an HMRC term for the amount given by s 59B(1) TMA, namely the difference between the amount of tax chargeable in a self-assessment and the aggregate of tax deducted at source and any payments on account. There is no right of appeal against a balancing payment.

48. I therefore hold that since there can be no appeal against a balancing payment determined under s 59B TMA, that the letter of 6 January 2016 and other documents contains no appealable decision in relation to such balancing payments, and that Mr Graves cannot be said to have notified any appeal under any enactment as required by Rule 20(1) of the FTT Rules. There is nothing that the Tribunal can admit as an appeal and nothing that it need do about the matter.

Summary of conclusions

49. I have held that the Notice of Appeal given by Mr Graves should be treated as including an application for permission to notify appeals against assessments made under s 29 TMA for the five tax years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06.

50. I have held that there are no other appeals made under an enactment that have been notified by Mr Graves. The Tribunal need not concern itself with any matters shown in the schedule and the 6 January letter other than those mentioned in §49.

Final observations

51. It is apparent to me, as it must be apparent to anyone who has had dealings with Mr Graves in connection with his tax affairs, that he feels extremely strongly about what he considers to have been injustices committed by HMRC and the Inland Revenue before it (and by many other bodies). The strength of his feelings is such that for the most part he cannot answer a simple question about a specific aspect of his tax affairs without beginning to relate the whole story from about 1980 with a year by year account of each separate injustice and complaint. He clearly tends to alienate those who are in a position like Mr Hall to help him by his use of intemperate, and it has to be said, unpleasant and occasionally racist epithets. He did have the grace to

apologise to the Tribunal for calling Mr Hall a liar in the corridor outside the hearing room – whether he apologised to Mr Hall I do not know, but he should have.

52. There is a suggestion in the papers that a charity involved in helping those of limited means, as Mr Graves claims to be, has tried to assist him. He would be well advised to seek the help of a charity such as TaxAid or TaxHelp.

53. But I repeat something that Mr Hall told him and that I also told him at the hearing. What HMRC is really only concerned to know about Mr Graves's affairs is the details of his accounts in the Channel Islands, in particular the amounts of interest credited to each account in each tax year from 2000-01 to 2007-08 and an account of what happened to the money in those accounts. Mr Graves gave some account of these matters but it appears from what Mr Hall said that his chronology may not have been reliable. Mr Graves mentioned accounts with the Scarborough Building Society into which Channel Island money was moved, and the purchase for his children of property using that money and of investments in a pension plan.

54. If he can provide documentary evidence of these matters with dates and amounts or in their absence a written account to the best of his memory (and he prided himself on his memory – it certainly seems to be very good for someone who is, as Mr Graves is, 81 years old) and send them to Mr Hall then it may well be that an acceptable compromise can be reached without Mr Graves having to attend more hearings of this Tribunal or of the County Court.

55. I am arranging for the Tribunal to list Mr Graves's application for permission to make late appeals for the five years mentioned. I will reserve this hearing for myself, if I am available. This will happen unless the Tribunal is informed by Mr Hall that matters have been settled.

56. 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.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 10 AUGUST 2016