



Neutral Citation: [2023] UKFTT 00429 (TC)

Case Number: TC08820

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2020/01054

Procedure – Application by Respondents to strike out appeal – Whether Tribunal has jurisdiction – No – Application allowed and appeal struck out

Heard on: 6 February 2023
Judgment date: 2 May 2023

Before

TRIBUNAL JUDGE BROOKS

Between

ROBERT WILLIAMS

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Philip Williams of Gerald Thomas Chartered Accountants

For the Respondents: Caitlin McDonald litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This application concerns the validity or otherwise of a “negligible value” claim made under s 24 of the Taxation of Chargeable Gains Act 1992 (“TCGA”) which HMRC contend is not in “in such form as the Board may determine” as required by paragraph 2(3) of schedule 1A to the Taxes Management Act 1970 (“TMA”). It is HMRC’s case that the Tribunal does not have jurisdiction in relation to these proceedings which should therefore be struck out in accordance with Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

2. The application is opposed by Mr Williams.

3. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing system.

4. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Procedural Background

5. The Tribunal heard the application on 6 February 2023.

6. On 14 February 2023, a decision notice which included a summary of the findings of fact and reasons for the decision, which allowed HMRC’s application and struck out the proceedings, was issued by the Tribunal (pursuant to Rule 35(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009).

7. By email dated 7 March 2023, Mr Phillip Williams of Gerald Thomas Chartered Accountants (the “Accountants”) acting for the appellant, notified the Tribunal that the appellant was considering the possibility of taking further action and, to “protect his position”, applied for a “full decision notice”. Under Rule 35(4) of the Procedure Rules it is made clear that if a Tribunal decision, as in this case, provides only summary findings and reasons a party wishing to appeal must apply for full written findings and reasons for the decision before seeking permission to do so.

8. This decision is therefore provided in accordance with Rule 35, in order to enable Mr Williams to decide whether to apply for permission to appeal against the decision of the Tribunal and, if so, to assist him in formulating any such appeal. However, and most regrettably, due to administrative difficulties and delays for which the Tribunal can only apologise, the 7 March 2023 email requesting the full decision notice was not referred to me until 28 April 2023 leading to the unavoidable delay in providing this decision.

FACTS

9. It is not disputed that in his 2015-16 self-assessment tax return Mr Williams claimed a loss of £200,000, under s 253 TCGA, in respect of a loan made to a Sierra Leone company, Greenway Timber Company Limited (“Company”).

10. On 6 September 2018, during HMRC’s enquiry into Mr Williams’s 2015-16 return, the Accountants, on behalf of Mr Williams, wrote to HMRC explaining that the loan had been converted into shares in a British Virgin Islands company, Greenway Timber Group Limited (“Group”), the parent company of Company, in July 2009 and that Mr Williams’s capital contribution for the shares was £250,000. Of the £250,000, £200,000 was payment for the loan and £50,000 plant and machinery given to Greenway.

11. Enclosed with the 6 September 2018 letter was a shareholder agreement which clearly identified the name of the company, the class of shares and the number of shares in Greenway held by Mr Williams.

12. HMRC replied to the Accountants on 18 September 2018 asking whether it should be assumed that Mr Williams wished to make a negligible value claim under s 24 TCGA and requested further information to enable such a claim to be considered.

13. Although further information was subsequently provided to HMRC, it was not until 28 March 2019 that the Accountants, in a letter to HMRC, confirmed that Mr Williams did indeed wish to make a negligible value claim. That letter also acknowledged that Mr Williams was withdrawing his claim for losses under s 253 TCGA.

14. HMRC, by letter of 8 April 2019, sought additional information from Mr Williams. Although this was provided, on 15 July 2019, HMRC wrote to the Accountants stating that, in the absence of any valid negligible value claim under s 24 TCGA, the loss of £200,000 would be removed from the 2015-16 capital gains tax computation. A closure notice was issued by HMRC, under s 28A(1B) and (2) TMA, to amend the return and remove the loss on 16 July 2019.

15. On 26 July 2019 Mr Williams notified the Tribunal of his appeal against that closure notice on the grounds that the negligible value claim was valid.

16. On 22 December 2022 HMRC made this application for that appeal to be struck out.

LAW

17. Section 24 TCGA provides:

Disposals were assets lost or destroyed, or become of negligible value

(1) Subject to the provisions of this Act, ..., the occasion of the entire loss, destruction, dissipation or extinction of an asset shall, for the purposes of this Act, constitute a disposal of the asset whether or not any capital sum by way of compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.

(1A) A negligible value claim may be made by the owner of an asset ("P") if condition A or B is met.

(1B) Condition A is that the asset has become of negligible value while owned by P.

(1C) Condition B is that—

(a) the disposal by which P acquired the asset was a no gain/no loss disposal,

(b) at the time of that disposal the asset was of negligible value, and

(c) between the time when the asset became of negligible value and the disposal by which P acquired it, each other disposal (if any) of the asset was a no gain/no loss disposal.

(2) Where a negligible value claim is made:

(a) this Act shall apply as if the claimant had sold, and immediately reacquired, the asset at the time of the claim or (subject to paragraphs (b) and (c) below) at any earlier time specified in the claim, for a consideration of an amount equal to the value specified in the claim.

“(b) An earlier time may be specified in the claim if:

(i) the claimant owned the asset at the earlier time; and

(ii) the asset had become of negligible value at the earlier time; and either

(iii) for capital gains tax purposes the earlier time is not more than two years before the beginning of the year of assessment in which the claim is made; or

(iv) for corporation tax purposes the earlier time is on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.

(c) ...

18. It is clear from the guidance contained in HMRC's Internal Capital Gains Manual (at CG13135), which is headed *How to make a negligible value claim – Time limit for claiming relief*, that:

“There is no requirement for the claimant to make a claim to HMRC within a specified time of the asset having become of negligible value.

The guidance continues:

Form of Claim

There is no specified form that must be used in order to make a negligible value claim. The claim it may be in any form the claimant chooses provided that it is made in writing and identifies:

- the claimant and their unique tax payer reference.
- the asset which is the subject of the claim (in the case of shares this would be the name of the company, the shares are held in, the class of shares on the number of shares held).
- the Value which is to be used as the consideration for the deemed disposal. Normally the value will be nil, but the claim should specify this.
- if the effect of the claim is to be back dated as per 224(2)(b) TCGA92, the earlier date when the claim is to take effect.

If a claim is sent outside of a tax return, it must also be signed by the claimant.

If you receive an indication that a negligible value claim is intended but the claim is not in the proper form, you should write to the claimant setting out the information which is needed to put the claim in the proper form.”

19. Section 31 TMA, “right of appeal” provides:

(1) An appeal may be brought against–

- (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),
- (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.

20. In so far as it applies to the present case, paragraph 2 of schedule 1A TMA provides:

- (1) Subject to any provision in the Taxes Acts for a claim to be made to the Board, every claim shall be made to an officer of the Board.
- (2) No claim requiring the repayment of tax shall be made unless the claimant has documentary proof that the tax has been paid by deduction or otherwise.
- (3) A claim shall be made in such form as the Board may determine.
- (4) The form of claim shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim.

21. Finally, Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, which makes it absolutely clear that if it does not have jurisdiction in relation to the proceedings or that part of them, the Tribunal has no discretion or choice but:

... **must** strike out the whole or a part of proceedings (emphasis added).

DISCUSSION AND CONCLUSION

22. It is common ground that the issue before the Tribunal is whether Mr Williams, has made a valid “negligible value” claim, under s 24 TCGA. It is also common ground that such a claim was not made in a self-assessment tax return and that accordingly, and pursuant to s 42(11) TMA, schedule 1A TMA is applicable.

23. Mr Philip Williams, for the appellant Mr Robert Williams, contends that a valid and timely negligible value claim was made by the Accountants in the letter of 6 September 2018 sent to HMRC together with the shareholder agreement. He submits that this was clear to HMRC by its response of 18 September 2018 to that letter, because, as of that date, HMRC had in its possession all the information necessary for such a claim for which, as stated in HMRC’s Manual, there “is no specified form that must be used”

24. Moreover, he says that if that letter was not in the form required, HMRC should, in accordance with its own guidance, have written to Mr Williams setting out the necessary to put the claim in the proper form.

25. However, I agree with Ms McDonald who appeared for HMRC, who contends it is clear from the words used in paragraph 2 of schedule 1A TMA that is necessary for a claim for negligible value to be made and that the Accountants letter of 6 September 2018 does not satisfy the necessary requirements for such a claim. It is not “in such form” as required by HMRC under paragraph 2(3) of schedule 1A to TMA and does not contain a declaration to the effect that “all of the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim” as required by paragraph 2(4) of that schedule.

26. Ms McDonald quite properly accepts that HMRC, rather than seeking clarification as to whether it should have assumed that a negligible value claim was being made, ought to have responded to the Accountants letter of 6 September 2018 by explaining, in accordance with its own guidance, what was needed to put the claim in the proper form and set out the information needed.

27. However, as to whether or not the claim is in the required “form” and HMRC’s failure to notify Mr Williams of how it could be corrected to comply, is in the absence of a right of appeal under s 31 TMA, a matter for HMRC (and possibly a formal complaint, reference to the Adjudicator and/or judicial review) rather than the Tribunal.

28. In *HMRC v HOK Ltd* [2012] UKUT 363 (TCC) the Tax and Chancery Chamber of the Upper Tribunal observed at [36] that the Tax Chamber of the First-tier Tribunal:

“... was created by s 3(1) of the Tribunals, Courts and Enforcement Act 2007
“for the purpose of exercising the functions conferred on it under or by virtue

of this Act or any other Act”. It follows that its jurisdiction [unlike that of the High Court which has an inherent jurisdiction], is derived wholly from statute.

29. The Upper Tribunal went on to note at [56]:

“... It is impossible to read the legislation in a way which extends its jurisdiction to include—whatever one chooses to call it—a power to override a statute or supervise HMRC’s conduct.”

30. The applicable legislation, s 31 TMA, does not contain any right of appeal against HMRC’s decision not to admit a negligible value claim that is not in the required form and consequently not valid. Given that the Tribunal’s jurisdiction is governed by that legislation, it follows that the Tribunal does not have the jurisdiction to determine this issue or consider the conduct of HMRC not to allow the claim or refer the appellant to the appropriate guidance.

31. Under Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 if the Tribunal does not have the jurisdiction to hear a case it no choice, but must strike out the proceedings.

32. This is the position in the present case and it therefore follows that, despite HMRC’s failings and while there would appear to be nothing to prevent Mr Williams from re-making the negligible value claim under s 24 TCGA, I am bound to allow HMRC’s application and strike out the appeal of Mr Williams.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

33. 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.

**JOHN BROOKS
TRIBUNAL JUDGE**

Release date: 2nd MAY 2023