



Neutral Citation: [2024] UKFTT 1162 (TC)

Case Number: TC09390

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Location: Decided on the papers

Appeal references: TC/2022/00199
TC/2022/00687

COSTS – application granted

Judgment date: 20 December 2024

Decided by:

TRIBUNAL JUDGE NIGEL POPPLEWELL

Between

**HUGH EDWARD MARK OSMOND
MATTHEW CHARLES ALLEN**

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

DECISION

INTRODUCTION

1. These appeals were allocated to the complex track. The hearing took place on 11-14 March 2024. On 8 May 2024 the Tribunal handed down its decision in favour of HMRC.
2. On 31 May 2024 HMRC made an application for its costs (“**the costs application**”). This was within the 28 day period specified in Rule 10 (4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2020 (“**the Rules**”). However, HMRC failed to send a copy of that application to the appellants’ representative as is required by Rule 10 (3)(a).
3. On 12 June 2024, a copy of the costs application was sent to the appellants’ representative.
4. On 1 July 2024, the appellants’ representative responded to the costs application. He took the point that HMRC had not served a copy of the costs application on him within the 28 day period. He went on to say that since the appellants had made an application for permission to appeal the decision to the Upper Tribunal (an application which I subsequently granted), determination of the costs application should be stayed until the final determination of the appeal so that all of the costs issues can be dealt with on one occasion.
5. It was my view that HMRC were indeed strictly in breach of Rule 10 (3)(a), and I asked them to make an application and representations as to why I should hear their costs application in light of this breach.
6. HMRC have made such an application, dated 12 December 2024 (the “**breach application**”). This is my decision on both applications.

THE BREACH APPLICATION

7. HMRC rightly submit that I have power under the Rules (and in particular under Rule 7(2) (a)) to waive the strict 28 day requirement to serve a copy of the costs application on the appellants’ representative. They say that it would be just to waive that requirement given that the application was served some 12 days later.
8. In the alternative they submit that I should exercise my discretion under Rule 5 and allow the costs application to be made out of time.
9. I have no hesitation in allowing the breach application. The overriding objective of the Rules is to enable the Tribunal to deal with cases fairly and justly. The appellants are not prejudiced by HMRC’s failure to serve their schedule of costs on their representative on a timely basis. The costs application was served some 12 days after the 28 day deadline. There is no doubt that HMRC are entitled to their costs given this is a complex tracked case. It would not be fair and just to reject the costs application simply because HMRC have failed to strictly comply with the 28 day deadline.
10. I therefore exercise the discretion that I have under the Rules in favour of HMRC and allow the breach application.

THE COSTS APPLICATION

11. The appellants' representative does not deny that HMRC are entitled to their costs, but (given that an appeal is being made to the Upper Tribunal), submits that determination of the costs application should be deferred until the appeal has been finally determined.

12. I am reluctant to do this. The matter may not be finally determined by the Upper Tribunal and may go further. In those circumstances it may be years before HMRC are paid the costs to which they are entitled (even if they may have to be repaid if HMRC ultimately lose). I would far rather deal with costs on an ongoing basis. And it would not be fair to HMRC if they were kept out of the money to which they are currently entitled for an extended period.

DECISION

13. I am not prepared to make a summary assessment. I Direct that the costs of and incidental to these proceedings should be subject to a detailed assessment pursuant to Rule 10 (6)(c).

RIGHT TO APPLY FOR PERMISSION TO APPEAL

14. 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.

**NIGEL POPPLEWELL
TRIBUNAL JUDGE**

Release date: 20th DECEMBER 2024