



TC04564

Appeal number: TC/2014/04174

VAT –Strike out application –output tax reclaim relating to temporary green fees – time limits – reasons for making late application – dispute as to whether HMRC correspondence received – later correspondence from HMRC not acted on –significant delay in making appeal – strike out allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROYAL LIVERPOOL GOLF CLUB

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE Rachel Short
William Haarer (Member)**

Sitting in public at Southernhay Gardens Exeter on 7 January 2015.

Mr Paul Clifford adviser to the Appellant and Mr T Leary for the Appellant

Mrs Jane Ashworth, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an application by HMRC to strike out the Appellant's claims made for
5 the repayment of output VAT for the periods 1 January 1974 - 31 December 1989; 1
January 1990 - 31 December 1996; 1 January 1997 - 31 December 2005 and 1
January 2005 - 31 December 2008. Those claims all relate to output tax charged by
the Appellant in respect of temporary green fees charged by it. The strike out
10 application is made under Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax
Chamber) Rules 2009 (the "Tribunal Rules").

2. The Appellant made a voluntary disclosure in respect of these claims ("the
Green Fees Claim") which HMRC received on 10 March 2009 and was rejected by
them on 29 April 2009. The Appellant had 30 days from the date of that letter to make
an appeal but no appeal was made.

15 3. HMRC's position is that since no appeal was made within the statutory time
limit, there is no basis on which an appeal can now be made. The Appellant argues
that no appeal was made within the 30 day limit due to a misunderstanding of the
process and the non-receipt by the Appellant of HMRC's rejection letter of 29 April
2009.

20 *The Law.*

4. The statutory time limit in which an appeal against the rejection of a claim for
VAT should be made is set out in s 83G VATA 1994:

5. "S 83G(1) *An appeal under s 83 is to be made to the Tribunal before –*

(a) the end of the period of 30 days beginning with –

25 *(i) in the case where P is the Appellant, the date of the document notifying
the decision to which the appeal relates, or*

*(ii) in a case where a person other than P is the Appellant, the date that
person becomes aware of the decision, or*

(b) if later, the end of the relevant period (within the meaning of s 83D).

30 6. S 83G(6) provides that an appeal can be made later than the period stipulated in
s 83G(1) if the Tribunal gives permission.

7. We were referred to the recent Upper Tier Tribunal decision concerning the
extension of statutory time limits: *Leeds City Council v HMRC* [2014] UKUT 0350
(TCC) and the earlier *Data Select Ltd v Revenue & Customs Commissioners* decision
35 [2012] UKUT 187 (TCC).

Background Facts.

8. The sequence of events and correspondence between the Appellant and HMRC and the Appellant's advisers and HMRC are critical to both parties' case and there is some dispute as to whether certain pieces of correspondence were received from HMRC by either the Appellant or their advisers.

5 9. Some of the confusion arises as a result of parallel claims which were being made by the Appellant in respect of VAT payable on membership fees, a claim made under reference MAN/2008/1408.

10. *Timeline;*

10 (1) Baker Tilly were appointed as the Appellant's auditors prior to 2006 but were not authorised as the Appellant's agent with HMRC in 2009 or 2010. Mr Clifford was appointed to manage the Appellant's VAT re-claims in March 2009

15 (2) The Appellant, Royal Liverpool Golf Club, ("RLGC") wrote to HMRC in March 2009 making a voluntary disclosure in relation to VAT paid on green fees. This letter was signed by Mr Cromie secretary of RLGC. (the Green Fees Claim)

(3) HMRC responded to Mr Cromie on 29 April 2009 rejecting that claim. That letter was not sent by HMRC to either Baker Tilly or Mr Clifford.

20 (4) On 2 August 2010 Paul Bendel VAT partner at Baker Tilly sent an email to HMRC stating that "*We are the auditors and advisers for the above golf club for whom we have been asked to look at the VAT position of supplies of sport to non-members in the form of green fees/temporary membership. I am aware of our client's claims covering the inclusive period 1 April 1973 – 31 December 2008 both of which have been rejected*"

25 (5) HMRC wrote to Mr Cromie at RLGC on 17 August 2010 responding to Baker Tilly's email "*regarding the current position relating to your Club's repayment claim for a refund of output tax on green fees and temporary membership subscriptions which was rejected on 29 April 2009*" pointing out that they could not communicate with Baker Tilly because they were not
30 authorised agents of RLGC.

(6) Paul Bendel of Baker Tilly spoke to HMRC on 8 September 2010. HMRC's records state that "*He is aware of the contents of the letter sent to Royal Liverpool as the Club has forwarded a copy to him*".

35 (7) Mr Clifford, as the Appellant's VAT representative, wrote to HMRC on 27 May 2014 about the repayment of the Green Fees Claim (referring to the decision in the *Bridport and West Dorset* case). HMRC responded to Mr Clifford stating that this claim had been rejected and that no appeal had been made against that decision in the statutory time period, adding that it was possible for the Appellant to make a late appeal.

40 (8) Mr Clifford responded to that letter on 18 June 2014 saying that no rejection letter had been received by the Appellant from HMRC and referred to email correspondence of 2011 from him to HMRC suggesting that the Green

Fees Claim should be included as part of the existing appeal relating to membership fees; MAN/2008/1408.

5 (9) HMRC provided Mr Clifford with a copy of the rejection letter sent to the Appellant on 29 April 2009, pointing out that they had evidence that the Appellant had received the rejection letter and no evidence that this claim was intended to be part of the MAN/2008/1408 claim; it was a completely different claim.

10 (10) Mr Clifford responded to HMRC on 21 July 2014 saying that there was no evidence that the Appellant's bookkeeper, (Angela Donnelly) had received the rejection letter of 29 April 2009 and that if one had been received by him, he would have sent a "template appeal" letter to HMRC. HMRC confirmed on 28 July 2014 that no such template appeal letter had been received for the Appellant. RLGC appealed to this Tribunal on 5 August 2014.

15 *Main documents seen.*

11. Letter from HMRC to Mr Moore of RLGC 6 October 2008 rejecting the membership fee VAT re-claim.
12. Letter from HMRC to Mr Cromie of RLGC 29 April 2009 rejecting the Green Fees Claim.
- 20 13. Email from Baker Tilly to HMRC 2 August 2010
14. Letter from HMRC to Mr Cromie of RLGC 17 August 2010
15. HMRC note of telephone conversation with Paul Bendel of Baker Tilly 8 Sept 2010.
16. Letter from Mr Clifford to HMRC 27 May 2014
- 25 17. Letter from Mr Clifford to HMRC 18 June 2014.
18. Letter from HMRC to Mr Clifford 14 July 2014.

Witness evidence.

Mr Leary of RLGC

- 30 19. At the Tribunal we heard evidence from Mr Leary, an ex-audit partner at Ernst and Young and current honorary treasurer of the Appellant. Mr Leary was not the treasurer of the Appellant during 2009 and 2010. Mr Leary said that he had written to the Chairman of the Appellant who had confirmed that he had not seen HMRC's letter of April 2009. Mr Leary described the Appellant's VAT files as in good order and
- 35 said that as treasurer he was aware of the importance of putting in appeals against

rejected VAT claims. He told us that the Appellant had had the same bookkeeper for twenty two years and that she understood that all information received from HMRC should be passed to the treasurer. Mr Leary accepted that the letter from HMRC dated 17 August 2010 was received by the Appellant but was not copied to Mr Clifford. He could not explain why no response had been made to that letter.

Mr Cromie and Mr Lanceley formerly of RLGc

20. In response to the Tribunal's directions we also received written witness statements from Mr David Cromie who was secretary of the Appellant from December 2008 to September 2014 and from Mr Nigel Lanceley who was the treasurer of the Appellant from April 2006 to April 2011. Both of these witness statements set out in identical terms RLGc's procedures to deal with correspondence from HMRC and details of the correspondence received from HMRC during 2010 and 2011 concerning VAT reclaims on green fees.

21. According to this witness evidence the Appellant had a process for ensuring that mail was delivered to and opened by the club secretary's assistant who distributed post to staff. HMRC correspondence would be given to the club secretary and then passed to the bookkeeper for filing. The bookkeeper was under instruction to copy correspondence from HMRC relating to the Green Fees Claim and ensure it was forwarded to Mr Clifford.

22. Mr Clifford was appointed to handle all VAT re-claims concerning both members' fees and green fees. The Appellant's bookkeeper submitted all VAT returns and was not involved in any of these reclaims. Mr Clifford advised the Appellant of any actions required relating to the reclaims but contact with Mr Clifford was sporadic and only occurred when action or information was required.

23. The only item of correspondence from HMRC seen by either Mr Cromie or Mr Lanceley during the relevant period was the letter of 17 August 2010 from Ros Dempsey of HMRC responding to an email enquiry from Paul Bendel of Baker Tilly.

HMRC arguments.

24. On behalf of HMRC, Mrs Ashworth said that while the Appellant might have believed that its claims for repayment of input VAT on green fees were on going, the emails and correspondence between HMRC and RLGc's representative, Baker Tilly, made it clear that they were aware that those claims had been rejected. The membership fee claim had already been rejected in 2008 and therefore it was reasonable for the Appellant to assume that the one of the claims referred to by Baker Tilly in their email of 2 August 2010 was the April 2009 Green Fees Claim.

25. HMRC did not accept that the claim rejection letter of 29 April 2009 had not been received by the Appellant, the Appellant must have received this letter since Baker Tilly were aware of it. Even if the letter had not been received by the Appellant in April 2009, the Appellant was made aware of the rejection of the claim by HMRC's letter of 17 August 2010. Despite this no further questions had been raised about the rejection of the Green Fees Claim in August 2010.

26. Mrs Ashworth suggested that the Appellant should have been aware of the rejection of the Green Fees Claim from August 2010 at the latest, but no contact had been made with HMRC until Mr Clifford's letter of May 2014. Mrs Ashworth referred to the emails of September 2011 from Mr Clifford asking to include the Green Fees Claim with the existing membership fee appeals, which she said also indicated that the Appellant was aware that the Green Fees Claim had been rejected as a standalone claim.

27. Mrs Ashworth referred to the recent authorities including in particular the *Leeds* decision indicating that statutory time limits should only be extended in rare cases and suggested that in this case the time limit stipulated in s 83G VATA 1994 should be respected. The statutory time limits provided important finality for both taxpayers and HMRC and ensured that there was equality of treatment between all taxpayers.

Appellant's arguments.

28. Mr Clifford explained to us that he acted for twenty two non-profit making clubs managing their VAT re-claims. He said that Baker Tilly were the Appellant's auditors having general care and conduct of the Appellant's financial affairs but not being primarily responsible for handling these VAT reclaims. He referred to the Appellant's claim for repayment of VAT on membership fees; MAN/2008/1408 and explained his understanding that HMRC's rejection of these claims on 6 October 2008 was the rejection referred to by Baker Tilly in their email of 2 August 2010 not the Green Fees Claims.

29. Mr Clifford suggested that the Green Fees Claim should be stood behind the *Yeovil Golf Club* claim which was itself stood behind *Bridport and West Dorset Golf Club*. Alternatively the Green Fees Claim should be treated as part of the 2008 claim made by RLGC for membership fees MAN/2008/1408.

30. Mr Clifford pointed out that HMRC had accepted that they were in error in not sending the letter of rejection of the Green Fees Claim to him as well as the Appellant in April 2009. In Mr Clifford's view the Appellant had not followed up its original Green Fees Claim letter because they thought that this claim had been accepted because neither they nor Baker Tilly received HMRC's rejection letter of 29 April 2009. Mr Clifford said that Baker Tilly had confirmed to him that they had no copy of this letter on file.

31. As regards the 2 August 2010 correspondence with Baker Tilly referring to "both claims" his interpretation of this was that it applied not to both the membership fee claim and the Green Fees Claim, but to the VAT element and the compound interest element of the membership fee claim. Mr Clifford confirmed that HMRC's 6 October 2008 letter rejecting the membership fee claim had been received by RLGC and was discussed at a meeting with Baker Tilly on 2 August 2010, explaining their reference to this claim in their email of that date.

32. Mr Clifford explained that having put in a protective claim for the Appellant as he had for all of his clients in March 2009, he believed that these pre-April 2009

claims were protected. If he had received a letter of rejection from HMRC for this Appellant he would have responded with a standard template letter appealing against the decision.

5 33. Mr Clifford said that as a practical matter the Appellant could not have made an appeal against HMRC's rejection of the Green Fees Claim since no rejection of the claim had been received from HMRC. In his view HMRC were attempting to avoid repaying VAT which was legally due.

Decision.

34. *Findings of Fact*

10 (1) The letter from HMRC rejecting the Green Fees Claim dated 29 April 2009 was sent from HMRC to RLGC. The Appellant can find no record of it having been received by them.

15 (2) In 2009 and 2010 HMRC were corresponding only with RLGC about the Green Fees Claim. Letters were not sent or copied by HMRC to either Baker Tilly or Mr Clifford.

(3) The email from Baker Tilly of 2 August 2010 refers to the Green Fees Claim. HMRC had not corresponded directly with Baker Tilly at the time; Baker Tilly must have been informed about the Green Fees Claim by RLGC.

20 (4) The Appellant had a standard procedure for dealing with correspondence including correspondence from HMRC.

35. There is no dispute that this appeal against HMRC's rejection of the claims for input VAT recovery was made many years after the end of the statutory deadline. At worst, the claim should have been made 30 days after HMRC's letter of 29 April 2009 and was not actually made until 10 March 2014.

25 36. The Appellant's case, though not stated in quite these terms, is that that deadline should not be respected since the 29 April 2009 rejection letter was not received by the Appellant or their representative. Therefore there is no rejection against which an appeal can be made and the statutory time limits do not start to run from 29 April 2009. The question of whether that letter was received by the Appellant is
30 fundamental to the issue in this appeal.

The Rejection Letter of 29 April 2009.

37. The evidence provided to the Tribunal about the sending and receipt of the 29 April rejection letter is contradictory; HMRC are clear that the letter was sent to the Appellant, the Appellant is equally adamant that the letter was not received. The
35 Tribunal asked for additional evidence from those who were acting officers of the Appellant during 2009 in order to assess how likely it was that a letter from HMRC had been received but not processed or otherwise mislaid by the Appellant. The evidence given to the Tribunal at the time and in the subsequent witness statements from Mr Cromie and Mr Lanceley suggests that, perhaps unusually for an
40 organisation such as the Appellant, there was an established process for dealing with

correspondence from HMRC which should have significantly reduced the risk of correspondence being missed.

The Baker Tilly email of August 2010.

38. However, against this we have the evidence in the Baker Tilly email to HMRC of 2 August 2010 that they knew about the Green Fees Claim. Mr Clifford argued that there was some confusion as to which of the claims being made by RLGC were being referred to by Baker Tilly, but we think that the email is clear on its face and that it is unlikely that Baker Tilly as professional advisers would have confused the two claims for VAT on membership fees and green fees. We know that HMRC did not communicate with Baker Tilly and therefore Baker Tilly's only source of information about the Green Fees Claim was RLGC. In our view this is evidence that someone at RLGC was aware of the rejection of the Green Fees Claim and had passed this information to Baker Tilly. Mr Clifford told us that Baker Tilly had no record of that letter on file, but that does not seem to us to necessarily suggest that they had not seen a copy of it or at least been told of its contents by someone at RLGC.

39. On the basis of this evidence our conclusion is that, on the balance of probabilities, HMRC's letter of 29 April 2009 was received by RLGC and its contents communicated to Baker Tilly, although it might not have been processed according to their usual procedures and was not sent to Mr Clifford.

20 *Grounds for extending time limits.*

40. Having accepted that HMRC's rejection letter was received by RLGC, we need to consider whether nevertheless, there are grounds for extending the time limits for RLGC to make this appeal.

41. We accept that there was a breakdown in communication between RLGC and Mr Clifford in April 2009 and that the person who had prime responsibility for dealing with this claim did not see HMRC's rejection letter. However, we also know that HMRC sent a letter to Mr Cromie at RLGC in August 2010 making it clear that the Green Fees Claim had been rejected, which RLGC do not dispute receiving. This was not sent to Mr Clifford by RLGC. In fact, other than Mr Clifford's emails with HMRC in 2011, no further action was taken to pursue the claims by RLGC until May 2014 when Mr Clifford wrote to HMRC.

42. We believe that the Appellant themselves, either with the support of Mr Clifford or Baker Tilly had an obligation to ensure that their understanding of the position was correct at least on receipt of the letter from HMRC on 17 August 2010. It was clearly an error on the part of the Appellant not to forward this letter to Mr Clifford and the Appellant took no further action in response to that letter. The fact that no action was actually taken until May 2014 when the decision in *Bridport and West Dorset* was published does not suggest that the Appellant was actively managing the reclaim process.

43. We also know that Mr Clifford, with extensive experience in dealing with claims of this type, was aware of having received similar claim rejections for other

clients during this period. We agree with Mrs Ashworth that this should have put him, as the adviser of Appellant on notice that the RLGC's Green Fees Claim might have been rejected. We do not consider that it is sufficient for Mr Clifford to say that having not received a rejection letter, he assumed that this claim had been accepted, given the amount of the reclaims and their significance to the Appellant.

Relevant factors

44. Mrs Ashworth referred to the need for finality and equality of treatment between taxpayers in considering whether a statutory deadline should be extended and we accept that it is not in the interests of justice for claims be potentially open for an unspecified period of time or that taxpayers who have failed to act with diligence should be afforded special treatment.

45. Although the Civil Procedure Rules are not technically applicable to the rules of this Tribunal, we have considered them as a guide to the basis of our decision and taken into account what was said in the *Leeds* decision to which Mrs Ashworth referred about the correct approach to applying statutory deadlines. The correct approach in this Tribunal is to consider all the circumstances of the case including; the reasons for the deadline, the length of any delay, whether there is a good explanation for the delay and the consequences of a refusal to extend the time limits.

46. It is true that refusing to extend the deadline for this Appellant will close off any opportunity for it to make this claim, but it is also the case that the reason for the missed deadline is mainly due to the failure of the Appellant to properly pursue its claim and that the delay in this case is very extensive. We have concluded by reference to these factors that the length of the delay and the Appellant's failure to promptly deal with correspondence from HMRC mean that in these circumstances an extension of time for making the appeal should not be granted.

47. Mr Clifford also argued that his intention was that the Green Fees Claim should be treated as part of the earlier membership fees claim (MAN/2008/1408) which was still outstanding and that this claim should be treated as stood behind *Yeovil Golf Club* and *Bridport and West Dorset*. We saw no evidence that the Green Fees Claim had been accepted as part of MAN/2008/1408, which as HMRC said, was a separate claim, or that it had been stood behind *Bridport and West Dorset*. This aspect of RLGC's appeal is therefore not accepted.

48. For these reasons we have concluded that the statutory deadline for making an appeal should not be extended in this case and HMRC's application should be allowed. This appeal is therefore struck out on the basis that it is made out of time under Rule 20 of the Tribunal Rules.

49. 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.

5

**RACHEL SHORT
TRIBUNAL JUDGE**

RELEASE DATE: 06 AUGUST 2015

10