



Neutral Citation: [2023] UKFTT 00431 (TC)

Case Number: TC08822

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Decided on the papers

Appeal reference: TC/2019/06660

PROCEDURE – HMRC strike out application – whether Tribunal has the jurisdiction to decide the issues raised by the Appellant – held, no – application allowed and appeal struck out

Judgment date: 17 May 2023

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

PHILIP LESLIE JINKS

Appellant

and

**THE COMMISSIONERS FOR
HIS MAJESTY’S REVENUE AND CUSTOMS**

Respondents

The Tribunal determined HMRC’s Application dated 16 January 2020 without a hearing. Both parties consented to the Application being determined in this way and the Tribunal considered that it was in the interests of justice to do so.

The Tribunal decided the Application having first read the Notice of Appeal dated 18 October 2019 (with enclosures); the amended grounds of appeal dated 28 November 2019; a bundle of documents prepared by HMRC and correspondence between the parties which had been copied to the Tribunal, and correspondence between the parties and the Tribunal.

DECISION

INTRODUCTION

1. On 18 October 2019, Mr Jinks completed a Notice of Appeal to the First-tier Tribunal (“the FTT” or “the Tribunal”). On 16 January 2020, HMRC applied to strike out Mr Jink’s appeal (“the Application”) on the basis that the Tribunal had no jurisdiction to decide the matters which Mr Jinks had asked it to decide.
2. Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Tribunal Rules”) provides that the Tribunal “must strike out the whole or a part of the proceedings” if it does not have jurisdiction in relation to the proceedings or that part of them”.
3. I agree with HMRC that the Tribunal has no jurisdiction to decide any of Mr Jinks’ grounds of appeal. His appeal is therefore **struck out** in its entirety.

THE GROUNDS OF APPEAL

4. Mr Jinks included Grounds of Appeal with his Notice of Appeal; on 28 November 2019 he also provided amended Grounds of Appeal. Those amended grounds said that Mr Jinks wished the Tribunal to decide the following issues:

- (1) Whether HMRC had responded properly and within the applicable time limits to the issues he had raised.
 - (2) Whether HMRC had failed to protect his personal data, causing him loss and distress.
 - (3) Whether the “tax refund letter” he had sent to HMRC on 2 November 2018 was an overpayment relief claim or could be treated as such.
 - (4) If the letter was such a claim, how much could be deducted from the amounts shown as owing to HMRC on his tax account, and whether HMRC had miscalculated the amounts due to him.
 - (5) Whether HMRC had misinterpreted the law, and as a result treated him unfairly.
5. Mr Jinks’ original grounds of appeal include two other points:
- (1) Whether HMRC had failed to issue a formal decision in a proper manner.
 - (2) Whether Mr Jinks has “a valid claim which would exceed or extinguish all or part of HMRC’s claim”. Although this ground is partly covered by points (3) and (4) above, Mr Jinks also sent HMRC a “loss clarification letter”, and I have inferred that he also wished the Tribunal to decide whether those losses are allowable.

6. Mr Jinks’ amended grounds also included issues of disclosure, but those were separately determined and dismissed by Judge Bedenham in a decision issued on 28 January 2022.

THE EVIDENCE

7. I was provided with a bundle (“the bundle”) by HMRC which included correspondence between the parties and other documents; I also had the Tribunal file containing the correspondence between the parties and the Tribunal.

8. Included in the bundle were two news articles provided by Mr Jinks, and a Statutory Demand (see further below). Also included was a decision of Judge Russell, sitting in the Employment Tribunal (“ET”). This decision had been supplied by Mr Jinks on the basis that it set out what had happened in the earlier years leading up to his disputes with HMRC. I have therefore accepted the background part of the ET judgment as factually correct; I have also

recorded Judge Russell's conclusions without finding whether or not they were correct, noting that Mr Jinks tried (albeit unsuccessfully) to appeal those conclusions.

THE FACTS

9. On the basis of that evidence I make the findings of fact set out below.

Mr Jinks' companies

10. Mr Jinks is and/or has been a director and shareholder of numerous companies; he held some of the shares via intermediate entities. The companies included Leisure Adventure Ltd ("LAL"); Saturn Leisure Ltd ("Saturn"); Mirage Marketing Ltd ("Mirage"), later renamed Jinks Asset Management Limited ("JAML"); Sphere Developments Ltd ("Sphere"); Regal Car Parks Ltd ("RCP") and Regal Entertainments Limited ("REL").

The ice rink and the ET proceedings

11. In 1992, LAL contracted with the London Borough of Havering ("the Council") to run an ice rink in Romford. Customers of the ice rink (and some others) used a car park owned by the Council and operated by RCP, which in turn subcontracted certain responsibilities to Saturn.

12. LAL contracted with Mr Jinks to pay him £35,000 pa plus a car and fuel and other benefits. LAL then went into liquidation, and the contracts transferred to Sphere; that company in turn was liquidated, and in 2000 the contracts passed to Saturn. Mr Jinks then signed a contract with Saturn entitling him to a salary of £50,000 pa, travel expenses, and other benefits.

13. In April 2007, the Council gave notice to Saturn to vacate the ice rink and the car park, and the parties entered into negotiations. In June 2008, the contract was transferred from Saturn to REL. At some subsequent point, Saturn entered into a creditors voluntary arrangement ("CVA"). Companies House records state that this ended in October 2014.

14. Meanwhile, on 4 August 2011, the Council issued proceedings against Saturn to obtain vacant possession of the site. In the course of the dispute, the Council were provided with a letter dated June 2012 stating that Mr Jinks' earnings were £95,000 pa, plus significant benefits in addition to those in previous employment contracts, including a loan facility of up to £500,000 and pension contributions of £36,000.

15. On 14 December 2012, the parties agreed a Tomlin Order under which the Council was to pay Saturn £150,000. From May 2013, the Council began running the car park without the involvement of any of Mr Jinks' companies.

16. Mr Jinks then made a employment claim against the Council, on the basis that there had been a TUPE transfer and he was now employed by the Council; he sought arrears of pay and benefits, pension contributions and holiday pay totalling £1.25m.

17. A hearing took place before Judge Russell in April 2016, with judgment given the same month. Judge Russell described the sums claimed as "unrealistic" and said Mr Jinks "knew that large amounts of the sums he now claimed due had not been paid at any time" and said they had been overstated in order to secure a better package for Saturn's loss of the ice rink and car park. Mr Jinks' claim failed. He appealed to the EAT, which upheld Judge Russell's judgment. He sought permission to appeal to the Court of Appeal, but this was refused.

Mr Jinks' SA returns

18. The self-assessment ("SA") returns submitted by Mr Jinks included those set out below.

Years 2007-08 and 2008-09

19. In his 2007-08 SA return, Mr Jinks declared income from Saturn and Mirage; in his 2008-09 return he also declared income from Regal. HMRC opened in-time enquiries into those returns. Having done so, they issued closure notices:

- (1) In relation to 2007-08, amending the additional income tax payable by Mr Jinks in the sum of £17,633.06, being over-repaid tax of £1,646.40 and further tax due of £15,986.66.
- (2) In relation to 2008-09, amending the additional income tax payable by Mr Jinks in the sum of £42,643.00, being over-repaid tax of £8,826.20 and further tax due of £33,816.80.

20. HMRC also issued Mr Jinks with penalties for 2007-08, on the basis that he had negligently submitted an inaccurate return, and for the following year on the basis that he had deliberately delivered inaccurate returns.

21. Mr Jinks appealed those decisions to the FTT. His appeal was heard on 1 December 2016 by Judge Rupert Jones and Mr Ian Menzies-Conacher. The FTT dismissed Mr Jinks' appeals, see *Jinks v HMRC* [2017] UKFTT 0200 (TC). Mr Jinks applied for permission to appeal that decision, but the UT refused permission on 22 March 2018.

Years 2009-10 to 2011-12

22. Mr Jinks filed SA returns for these years. He did not declare any income from Saturn or RCP.

Year 2012-13

23. Mr Jinks' 2012-13 SA return declared employment income of £39,509, of which £39,313 was reported as having been received from Saturn.

Year 2013-14

24. Mr Jinks received a non-taxable redundancy payment from RCP in this tax year, but did not enter this correctly on his SA return. As explained below, HMRC subsequently accepted that this amount was not taxable.

Communications with HMRC

25. At some point before 16 March 2018, HMRC's debt management department contacted Mr Jinks seeking recovery of amounts which they believed to be owed by him.

26. On 16 March 2018, Mr Jinks wrote to HMRC's SA department saying that he had made loans to RCP, but that as that company had been liquidated, he believed the loans had become of negligible value. In the same letter, he said he had invested around £1.24m in Saturn and he believed this too had become of negligible value, and he asked which losses he could claim for, in what amounts, how to make the claims, whether there were any other allowances and how to claim them, and whether the amounts could be offset against his income tax account.

27. On 8 May 2018, Mr Jinks wrote to HMRC's debt management department, saying he had had no response to the letter of 16 March 2018, and that the amounts he owed were "more than likely extinguished" by the nil value claims in that earlier letter, by other as yet uncrystallised nil value claims, by further appeals and by a claim against HMRC for material non-disclosure.

28. On 31 May 2018, Mr Hopkins, an Inspector in HMRC's SA department, replied to Mr Jinks' letter of 16 March 2018. In respect of the loans to RCP, he said:

"You have claimed a capital loss under Section 24 TCGA 1992. However, I believe you may have a claim under Section 253 TCGA 1992, in respect of an

irrecoverable loan to a trader. HMRC's help sheet 296 is available online at www.gov.uk. Please review this and consider whether you are eligible to make a claim. Any allowable loss can be claimed on the Capital gains supplementary page within your 2017-18 Self Assessment Tax Return. The return will need to be filed by 31 January 2019 (online) or by 31 October 2018, if you choose to submit a paper return."

29. In relation to the investment in Saturn, Mr Hopkins said:

"I am unclear as to whether you are seeking relief under Section 253 TCGA 1992 (irrecoverable loan) or under other legislation. If you owned shares in the company, you may be able to claim relief under Section 131 ITA 2007 (share loss relief).

I would advise you to review HS296 and HS286 (online) and provide further information to substantiate the claim. I would like to highlight the fact that the company remains active, according to the information held by Companies House, so any loss claim in respect of shares in the company would be premature.

If the loss is in any way connected to the termination of your employment with Saturn Leisure Ltd, I will need you to provide further information, so that I may determine the nature of your claim."

30. On 31 July 2018, Mr Jinks sent Mr Hopkins a copy of the Employment Tribunal judgment, which he said explained "comprehensively" the circumstances of his investment in Saturn and that the key passages related to a transfer of money and moneys worth from Saturn to RCP. He said that "it is not clear what the judge decided in respect of which liabilities transferred with me" but it was clear that "neither company could pay me back whether from the Director's loan account or from the profit and loss".

31. On 7 September 2018, Mr Hopkins replied, saying:

"the Employment Tribunal judgment does not provide any specific information regarding the loans/investments you made in respect of the two companies, so I am unable to provide any further guidance on your potential claims. Under Self Assessment, you must determine whether you are eligible to claim a loss.

HMRC can provide you with information and refer you to the relevant legislation, but we cannot provide confirmation on whether the loss is allowable. You must determine that for yourself. I would advise you to review the help sheets again and seek advice from a tax advisor, if necessary. You must make any valid loss claims via your annual Self Assessment Tax Return.

I would like to reiterate the fact that Saturn Leisure Ltd remains active, according to the information held by Companies House, so any loss claim in respect of shares in the company would be premature."

32. On 2 November 2018, Mr Jinks sent HMRC the "tax refund letter" and the "losses clarification letter", which are explained at §37ff.

The statutory demand

33. Meanwhile, on 10 July 2018, HMRC had issued a statutory demand to recover various tax and National Insurance Contribution debts, related interest, surcharges and penalties for the tax years 2007-08 to 2013-14 in the total sum of £101,314.95.

34. On 21 August 2018, Mr Jinks applied to set aside the statutory demand. On 12 September 2018 there was a hearing at Brighton County Court. This was adjourned to allow Mr Jinks to respond to a witness statement made by HMRC.

35. At the second hearing on 19 October 2018, Mr Jinks’ application was adjourned generally with liberty to restore upon him agreeing to file his SA return for 2017-18 by 8 November 2018.

36. On 2 November 2018, Mr Jinks submitted his 2017-18 self-assessment tax return along with the “tax refund letter” and the “losses clarification letter”.

The tax refund letter and the losses clarification letter

37. In the tax refund letter, Mr Jinks said he had overpaid tax of an estimated sum £94,240 and was entitled to a refund. He stated that the overpayments had occurred due to a transfer of undertakings between Saturn and RCP, and that he had paid tax on income not actually received by him. The letter asserted that the following tax had been overpaid:

Tax year	Taxable Income on returns	Income not received	Tax deducted	Tax overpaid
2007-08	£105,210	£41,000	£35,588	£16,400
2008-09	£182,596	£90,000	£52,327	£36,000
2009-10	£86,270	£35,000	£20,264	£14,000
2010-11	£75,976	£22,000	£12,506	£8,800
2011-12	£65,864	£15,600	£19,345	£6,240
2012-13	£41,473	£2,000	£19,195	£800
2013-14	£62,764	£30,000	£18,703	£12,000
Total				£94,240

38. The losses clarification letter included a schedule which stated that Mr Jinks had loaned:

- (1) £45,633 to RCP, plus a further sum of £226,348, which he referenced as “employment tribunal”;
- (2) £83,538 to REL and
- (3) two amounts of £828 to other companies now dissolved.

39. The letter also said that the loans had “converted to shares if not repaid” and “as the shares were now of nil value, they are the subject of a nil value claim”.

40. On 10 December 2018, Mr Hopkins wrote again to Mr Jinks, saying that the losses had been neither substantiated nor claimed by amending his 2017-18 return. On 19 August 2019, Mr Mawson of HMRC responded to the tax refund letter, saying that Mr Jinks was out of time to make claims for all the years in question.

41. On 3 September 2019, Mr Basar of HMRC’s debt management department wrote to Mr Jinks confirming that the debt due under the Statutory Demand had been reduced to £87,379.26 as a consequence of the adjustment to his 2013-14 return, to take into account the redundancy payment.

The Notice of Appeal and the first FTT Decision

42. On 18 October 2019, Mr Jinks completed a Notice of Appeal to the Tribunal. On 16 January 2020, HMRC filed and served the Application, on the basis that the Tribunal had no jurisdiction to decide the matters which Mr Jinks had asked the Tribunal to decide. Mr Jinks then made an application for disclosure.

43. On 13 September 2020, Judge Bailey considered the Application on the papers and on 5 November 2020 issued a full decision striking out the appeal. On 14 December 2020, Mr Jinks applied for permission to appeal that decision. One of his grounds was that he had been unaware that the Application would be decided on the papers before his disclosure application had been resolved.

44. On 13 January 2021, Judge Bailey set aside her decision because she accepted that Mr Jinks had been unaware the Application would be determined before the disclosure application. She issued directions for the Application to be decided before a different Tribunal.

The subsequent communications

45. There was then a delay while Mr Jinks' disclosure application was determined by Judge Bedenham, and on 30 August 2022, Judge Vos issued directions for the Application to be heard.

46. On 7 September 2022, Mr Jinks asked for an extension of time to comply with the directions until 1 November 2022, because he was on vacation until 9 October 2022. HMRC did not object and the extension was granted.

47. On 20 October, 25 October and 27 October 2022, Mr Jinks wrote to the Tribunal saying that the Bundle should not contain any documents relating to facts, because the issue of jurisdiction was purely an issue of law. On 28 October 2022, the Tribunal responded (as directed by Judge Vos), explaining that although the issue was one of law, the Tribunal needed to understand the grounds of appeal, and documents which the parties considered relevant to clarifying those grounds of appeal would thus be in the Bundle. Mr Jinks accepted this was correct.

48. The parties exchanged correspondence about documents, and the Tribunal made preparations for the hearing. On 28 November 2022, Mr Jinks emailed the Tribunal saying he had been unwell for a number of weeks and asked for an extension of time to provide a witness statement and documents, although he said he was unsure whether any additional documents were in fact relevant or necessary. On 23 December 2022, Judge Fairpo granted an extension until 13 January 2023.

49. On 9 January 2023, Mr Jinks emailed again, saying he was still unwell, but was content for the case to be decided on the papers. He sent another email on 7 February 2023, attaching a doctor's note which said he was sick. The Tribunal listed the Application to be heard on the papers before me.

The county court proceedings

50. The county court proceedings are currently adjourned pending the resolution of Mr Jinks' appeal to this Tribunal.

THE HEARING ON THE PAPERS

51. I considered whether it was in the interests of justice to decide the Application on the papers. I took into account that Mr Jinks had previously indicated that he might be well enough to provide a skeleton argument, but has not done so, and that he had also not provided the further documents to which he had referred.

52. However, I decided that it was in the interests of justice to proceed given that:

(1) the Tribunal had been provided with a bundle by HMRC which included correspondence between the parties, as well as other documents, as explained earlier in this judgment;

(2) I also had the Tribunal file containing the correspondence between the parties and the Tribunal;

(3) the bundle and the file contained explanations by both parties as to their position as regards the Application and whether it should be allowed or refused;

(4) the Application had been made on 16 January 2020, over three years ago; Judge Bailey had issued her set aside decision on 13 January 2021, over two years ago. Further delay was not in the interests of justice; and

(5) Mr Jinks was himself unsure whether any further documents were relevant or necessary. I considered his list of further documents. I agree that those which have not been provided are not relevant to the issues of law which I have to decide, and that Mr Jinks was correct in his view that they were neither relevant or necessary. For completeness, those documents were:

- (a) the EAT decision, upholding the ET decision;
- (b) salary and wages returns for Saturn and for JAML;
- (c) Mr Jinks' case file at Brighton County Court; and
- (d) letters from HMRC's freedom of information team, their cyber security team and a "case review" letter.

THE TRIBUNAL'S JURISDICTION GENERALLY

53. The Tribunal is a statutory body. It only has the powers which are granted to it by Parliament. Those powers include deciding appeals against specific HMRC decisions.

54. Claims made by taxpayers on the basis that the relevant HMRC decision maker acted unreasonably, irrationally or unfairly are matters to be decided by judicial review. The Tribunal has no judicial review power unless (exceptionally) that power is itself provided for within the terms of the relevant statutory provision. All other judicial review claims must be made to the High Court.

MR JINKS' GROUNDS OF APPEAL CONSIDERED

55. HMRC submit in the Application that none of the Grounds of Appeal is within the Tribunal's jurisdiction. I next set out each of the grounds, the parties' related submissions and my conclusions.

Whether HMRC responded properly and in time

56. The first issue raised by Mr Jinks was whether HMRC had responded properly and within the applicable time limits to the issues raised by him. He clarified in the text of his amended grounds that this was a reference to the slowness of Mr Hopkin's responses to his letters and his failure to provide advice as to the losses he could claim.

57. This is a complaint that Mr Hopkins acted unfairly or unreasonably. The Tribunal does not have any jurisdiction to rule on that complaint; legal challenges of that nature must be made to the High Court. I therefore strike out this ground of appeal.

Whether HMRC had failed to protect his personal data

58. Mr Jinks' amended grounds specify that he is here referring to HMRC's obligations under the Data Protection Act ("the DPA"). Mr Jinks said that HMRC no longer have some of the data relating to his pay and benefits during the period from 2007 to 2013, and it was not until 2018 that it was known that he would not receive the amounts he was entitled to receive. Mr Jinks also said as follows (where he is "A"):

"It is particularly relevant to this case that HMRC's record of failures to protect tax payers personal data is both well-known and well documented. In A's case the evidence which HMRC holds, shows that it is more likely than not, that an unauthorised third party had access to A's Personal tax account and that a number of changes to the data in that account were made by unauthorised third parties between 2008 and at least 2013. Such changes

render HMRC's records and therefore calculation to be fundamentally inaccurate and unreliable when used to assess A's Claim."

59. The Tribunal has no jurisdiction to decide issues arising from the DPA 1998 or the DPA 2018. Complaints about data protection issues must be made in the first instance to the Information Commissioner; the jurisdiction to hear appeals against decisions made by that Commissioner rests with the General Regulatory Chamber. I therefore also strike out this ground of appeal.

Whether the tax refund letter was (or could be treated as) an overpayment relief claim

60. Mr Jinks submitted that the tax refund letter was plainly a claim to be repaid tax which had been incorrectly paid over by him or on his behalf and was thus a claim for overpayment relief. HMRC respond as follows:

Tax year	Alleged overpayment	HMRC response
2007-08	£16,400	The liabilities for these years are final: they were decided by the FTT (Judge Jones and Mr Menzies-Conacher); permission to appeal to the UT was refused.
2008-09	£36,000	
2009-10	£14,000	The deadline for Mr Jinks to amend his returns was 12 months after the filing date, and the absolute deadline for an overpayment relief claim is four years after the end of the tax year. Mr Jinks did not amend his returns, and the tax refund letter was sent on 2 November 2018. Mr Jinks is out of time to claim.
2010-11	£8,800	
2011-12	£6,240	
2012-13	£800	
2013-14	£12,000	
Total	£94,240	

61. HMRC are correct that TMA s 42(2) provides that if a person is within SA, any claim must be made by being included in the SA return if it could be so included. Mr Jinks was within SA for all relevant years, and the law therefore requires him to make his claim by including it in his SA returns, if it could be so included, either when the return was filed, or by amending the return within 12 months after the filing date, see TMA s 9ZA

62. Mr Jinks did not include any of the above claims in his SA returns and did not amend them within the time limit. Even had he been unable to amend his returns during that time, so that he could make a claim by letter, the absolute limit for such a free-standing claim is four years after the end of the tax year in question, see TMA s 33 read with Sch 1AB paras 1 and 3. That deadline had also passed by the date of Mr Jinks' tax refund letter. Thus, all of Mr Jinks' tax refund claims were made outside the relevant time limits.

63. In *HMRC v Raftopoulou* [2018] EWCA Civ 818 ("*Raftopoulou*"), the Court of Appeal considered whether the taxpayer could appeal to the FTT against HMRC's refusal to extend the time limits imposed by statute, and decided that the FTT did not have that jurisdiction.

64. As a result, the Tribunal has no jurisdiction to allow Mr Jinks to appeal on the basis that he has overpaid tax for the years set out in the tax refund letter, both because those claims are out of time, and because the Tribunal has no power to extend the time limits.

65. Mr Jinks also says that it was "unfair" of HMRC not to accept his claim. This is a complaint about HMRC's behaviour, and a matter which can only be raised by judicial review. This Tribunal has no jurisdiction to decide whether it was unfair of HMRC not to extend the time for Mr Jinks to make the overpayment claims.

66. This ground of appeal is therefore struck out. I add for completeness that the tax refund schedule is markedly unparticularised: it does not say which of Mr Jink's many companies the alleged overpayments sums related to, or attach any evidence from those companies showing that lower amounts were in fact paid to him than the figures shown on his SA returns for each of the tax years in question.

Whether HMRC misinterpreted the law, and as a result treated Mr Jinks unfairly

67. Mr Jinks has not identified any point of law which has been misinterpreted by HMRC. In any event, as explained earlier in this decision, this Tribunal has no general jurisdiction to decide claims relating to unfairness.

Whether HMRC failed to issue a formal decision in a proper manner

68. It appears from Mr Jinks' correspondence (in particular an email sent on 30 September 2019 to HMRC's debt management department), that this is a reference to HMRC's failure to issue a formal decision in relation to his overpayment relief letter and losses clarification letter.

69. In Mr Jinks' case, on 10 December 2018 Mr Hopkins wrote to Mr Jinks in response to the losses clarification letter, stating that the losses had been neither substantiated nor claimed by amending his 2017-18 return. On 19 August 2019, Mr Mawson responded to the tax refund letter, saying that Mr Jinks was out of time to make claims in relation to each of the years in question.

70. In *Raftopoulou*, the taxpayer's position was very similar to that of Mr Jinks. Dr Raftopoulou had made an overpayment relief claim, but HMRC acknowledged receipt of his letter, but said it was "now too late to make an amendment to the return" and that:

"the normal time limit for an overpayment relief claim is four years from the end of the relevant tax year. This means that the amendment is out of time and a repayment cannot be made".

71. Dr Raftopoulou sought to appeal against that conclusion, but the Court of Appeal held that the HMRC letter was not an appealable decision, and also held that the FTT had no jurisdiction to consider Mr Raftopoulou's appeal about his overpayment relief claim. The position in Mr Jinks' case is essentially the same. Mr Hopkin's letter of 10 December 2018 and Mr Mawson's letter of 19 August 2019 were not appealable decisions.

72. The Tribunal has no jurisdiction to *direct* that HMRC make an appealable decision. That is a judicial review power, and a matter to be decided by the High Court. I therefore refuse this ground of appeal.

Whether the losses identified in the losses clarification letter can be offset

73. As set out earlier in this judgment, the losses clarification letter included a schedule stating Mr Jinks had loaned £45,633 to RCP plus a further sum of £226,348, which he referenced as "employment tribunal"; £83,538 to REL, as well as two amounts of £828 to other companies now dissolved. The letter also said that the loans had "converted to shares if not repaid" and "as the shares were now of nil value, they are the subject of a nil value claim".

74. I have already found that Mr Hopkins did not make an appealable decision relating to the losses clarification letter; any consequential questions as to the amount of any losses are thus also outside the jurisdiction of the Tribunal.

75. I also agree with Mr Hopkins that Mr Jinks has not substantiated the losses set out on his schedule. In particular, he provided no evidence that he had made the loans in question or that they had converted to shares. The only supporting document he provided was a copy of the ET judgment. As Mr Hopkins said, this did not provide information about loans. Judge Russell instead held that Mr Jinks "knew that large amounts of the sums he now claimed due had not

been paid at any time” and that those sums had been overstated in order to secure a better package for Saturn’s loss of the ice rink and car park.

76. Even if the sums which Mr Jinks claimed to be due from Saturn and other companies were in fact payable to him (which Judge Russell found was not the case), those amounts would not be *loans* from Mr Jinks to the companies. They would instead be debts owed to him by the companies, in relation to which no relief could be due under either TCGA s 253 (loans to traders) or under ITA s 131 (share loss relief). Mr Jinks also referred to ITA s 128 (employment loss relief) but that section only applies in the rare situation where a person has to pay back to his employer, income which had previously been received and taxed; the section does not apply where a person has not received the income in the first place.

77. I strike out this ground of appeal.

OVERALL CONCLUSION AND APPEAL RIGHTS

78. For the reasons set out above, all Mr Jinks’ grounds of appeal are struck out and the Application is allowed. Mr Jinks therefore has no appeal to be decided by the Tribunal: it is struck out in its entirety.

79. 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 Rules. 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.

**ANNE REDSTON
TRIBUNAL JUDGE**

Release Date: 17th MAY 2023