



Neutral Citation: [2023] UKFTT 00959 (TC)

Case Number: TC08983

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Location: Decided on the papers

Appeal reference: TC/2022/12981

SDLT – HMRC application to strike out – refusal by HMRC to amend land transaction return – whether refusal is appealable to FTT – no jurisdiction to hear appeal – requirement to strike out - Rule 8, Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

Judgment date: 23 October 2023

Decided by:

TRIBUNAL JUDGE ALEKSANDER

Between

SAMUEL HALPERN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the appeal on 20 October 2023 without a hearing under the provisions of Rule 29(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

DECISION

INTRODUCTION

1. This is the application by HM Revenue and Customs (“HMRC”) that Mr Halpern’s appeal, against a decision to refuse to allow an amendment to a land transaction return, be struck out.

2. Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (insofar as applicable to this case) provides:

(2) The Tribunal must strike out the whole or part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings [...]

(3) The Tribunal may strike out the whole or part of the proceedings if—
[...]

(c) The Tribunal considers that there is no reasonable prospect of the appellant’s case, or part of it succeeding.

3. It is clear from the use of “may” in Rule 8(3), which in contrast to the use of “must” in Rule 8(2), that the Tribunal has a discretion as to whether or not to strike out an appellant’s case under Rule 8(3). But, if the Tribunal does not have jurisdiction in relation to the matter under appeal, it has to strike it out – irrespective of any underlying merits of the Appellant’s case.

BACKGROUND

4. On 28 May 2022 Mr Halpern’s representative wrote to HMRC requesting a refund of the 3% higher rate of SDLT on additional dwellings paid by Mr Halpern upon the purchase of a property in Salford.

5. On 7 July 2022 an officer acting on behalf of the HMRC refused to amend Mr Halpern’s land transaction return and the refund of the higher rates paid in respect of the property. Following correspondence between the representative and HMRC, the officer wrote to the representative on 13 September 2022 confirming his decision to refuse to amend the land transaction return.

6. On 8 October 2022 Mr Halpern appealed to the FTT against that refusal to amend the land transaction return.

7. The reasons for the officer’s refusal are the issues in dispute and give rise to this appeal. These issues relate to the time limits set out in Schedule 4ZA, Finance Act 2003, and whether the amended provisions of paragraph 3(7A) allow an extension to the three-year period otherwise specified in that paragraph.

THE APPLICATION

8. On 30 January 2023, HMRC applied to the Tribunal to strike out the appeal. A copy of the application was sent by the Tribunal to Mr Halpern on 12 September 2023, requesting his response within 28 days. On 2 October 2023, Mr Halpern applied for an extension of time of 14 days to file his response, which I have granted. His response was filed on 9 October 2023.

THE LAW

9. Paragraph 35, Schedule 10 of Finance Act 2003 sets out the circumstances under which a taxpayer may bring an appeal to the FTT in respect of SDLT:

35(1) An appeal may be brought against—

- (a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),
- (b) a conclusion stated or amendment made by a closure notice,
- (c) a discovery assessment,
- (d) an assessment under paragraph 29 (assessment to recover excessive repayment), or
- (e) a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).

SUBMISSIONS OF THE PARTIES

10. HMRC submit that Mr Halpern is seeking to appeal a decision that is outside the provisions of paragraph 35. As the matter under appeal is not an appealable decision, Mr Halpern cannot bring an appeal against that decision before the FTT. In consequence, HMRC submit that the appeal should be struck out under Rule 8(3) as it has no realistic prospects of success.

11. Mr Halpern submits that the appeal should not be struck out in advance of any hearing because:

- (a) It is the FTT's remit to consider all his evidence at a hearing to see if his circumstance is exceptional and then the FTT can decide if he has a valid case to consider whether the three-year time limit can be extended.
- (b) HMRC's refusal to extend the three-year time limit and their application to strike out the appeal shows a lack of fairness as it is apparent that HMRC do not want the FTT to decide on this matter.
- (c) The FTT has jurisdiction in relation to this appeal as COVID-19 is listed as exceptional circumstance in the explanatory notes prepared for the House of Commons when it considered the amendments made to Schedule 4ZA by Finance Act 2020.
- (d) Rule 8(3) says that it is for the tribunal – not HMRC - to decide if there is no reasonable prospect of Mr Halpern's case succeeding.

DISCUSSION

12. This Tribunal only has jurisdiction to determine appeals in circumstances where that jurisdiction is conferred by legislation. Absent legislative authority, this Tribunal has no jurisdiction in respect of an appeal – and the appeal must be struck out under Rule 8(2).

13. The jurisdiction conferred on this Tribunal in respect of appeals relating to SDLT is set out in paragraph 35, Schedule 10 of Finance Act 2003. The refusal by HMRC to allow an amendment to a land transaction return is not one of the matters specified in paragraph 35, and therefore the legislation does not confer jurisdiction on this Tribunal to hear an appeal against HMRC's decision in this case. It follows that this appeal must be struck out under Rule 8(2).

14. In fairness to Mr Halpern, I deal with his submissions as follows:

- (1) If the Tribunal had jurisdiction to hear this appeal, then it is correct that the Tribunal would hear evidence to determine whether the requirements permitting an extension to the usual three-year time limit apply. In particular, the Tribunal would need to consider whether the circumstances relating to the COVID-19 pandemic gave rise to exceptional circumstances. However, as I have found that the Tribunal does not have jurisdiction, this dispute cannot go to a hearing.

(2) If the legislation does not confer jurisdiction on this Tribunal, it cannot hear the appeal. It is not a question of HMRC lacking fairness, it is about the scope of the legislation.

(3) Although HMRC's application is made under Rule 8(3), I have found that it is Rule 8(2) that is engaged as the FTT has no jurisdiction. In consequence I have no discretion, but must strike-out the appeal.

CONCLUSION

15. The appeal is struck-out.

16. I note that although no appeal lies to this Tribunal, Mr Halpern is not entirely without remedies in respect of HMRC's refusal. He could have applied to the High Court for judicial review of HMRC's decision – but I recognise that the time limits for such an application have long since expired. Mr Halpern could also make an application to the Revenue Adjudicator, who can investigate whether HMRC applies its policies and guidance fairly, and how HMRC exercises its discretion. Details about the Adjudicator and how to make applications to him are available on his website at <https://www.gov.uk/government/organisations/the-adjudicator-s-office>.

17. If Mr Halpern considers that the Tribunal ought to have jurisdiction to determine appeals against refusals by HMRC to permit amendments to land transaction returns, as this would require an amendment to paragraph 35, Mr Halpern would need to raise the matter with his MP.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

18. 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.

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

Release date: 23rd OCTOBER 2023