



TC02775

Appeal number: TC/2013/01974

INCOME TAX – late filing of appeal – Sections 49 C, D and H Taxes Management Act 1970 - whether late appeal allowed – Yes. Appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

IAN MENZIES

Appellant

- and -

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

**TRIBUNAL: JUDGE W RUTHVEN GEMMELL, WS
IAN M P CONDIE, CA**

**Sitting in public at George House, 126 George Street, Edinburgh on 17 June
2013**

Ian Menzies for the Appellant

Ms Chris Cowan, Officer of HMRC, for the Respondents

DECISION

5 1. The Appellant, Ian Menzies ("IM"), appealed against a decision by the Respondents, the Commissioners for Her Majesty's Revenue and Customs ("HMRC"), issued on 27 May 2009, to decline an appeal to the Tribunal or acceptance of an Internal Review as the appeal was made outwith the acceptance period.

The Facts

10 2. A bundle of documents prepared by HMRC were before the Tribunal, including references to, only, Sections 9A, 28A, 49C, 49D, 49H, 54, 118, all of the Taxes Management Act 1970.

15 3. An enquiry into IM's tax return and, specifically, a deduction for Seafarers Earnings Deduction ("SED"), was intimated by letter dated 10 September 2008 and sent to IM at an address in Ramsgate.

20 4. IM sent supporting evidence and, on 27 October 2008, HMRC requested further information and sent reminders on 3 December 2008 and 9 January 2009; the latter stating that, in the absence of further relevant evidence, the SED claim would be removed from IM's 2006/07 tax return, resulting in IM having to repay tax with interest.

25 5. On 29 January 2009, IM was written to at an address in Dunoon with HMRC stating that an incorrect amount of SED had been claimed and giving IM a right to appeal, together with an Appeal Form SA536, with information that an independent appeal could be made to the Appeal Commissioners, as they then were.

6. On 5 February 2009, IM completed the Appeal Form SA536 which stated that the grounds of the appeal were "I have not received all the correspondence regarding this enquiry due to a change of address" ("the SA536 appeal").

30 7. This was acknowledged by HMRC on 11 February 2009 in a letter which confirmed that all previous correspondence had been sent following a telephone conversation on 5 February 2009.

8. IM replied by an undated letter stamped as received by "Local Compliance 10 February 2009". This was acknowledged on 12 February 2009 and a request for further information was made.

35 9. On 15 April 2009, HMRC wrote "further to my letter of 24 February and our telephone conversation on 11 March 2009, I note that to date I have not heard from you with the additional information in support of your appeal for 2006/07. During our telephone conversation we discussed the appeal and I can now confirm that from 1 April 2009 a new appeals procedure has been

introduced..... You can now either be reviewed by an independent review officer within HMRC or you can notify your appeal directly to the Tribunal Service without review by HMRC. This must be done within the next 30 days..... if you do not notify your appeal to the Tribunal Service or have not requested an independent review by 18 March 2009, your appeal will be treated in accordance with the details set out in my letter of 29 January 2009".

5

10. IM sent an undated letter stamped as received by "Local Compliance 16 April 2009 Cardiff" in which he "hoped HMRC had everything needed to conclude their investigation".

10

11. IM sent a further undated letter stamped as received by "Local Compliance 23 April 2009 Cardiff" saying "I write to appeal against this enquiry as I have provided every piece of evidence and complied with every request" ("letter of 23 April").

12. On 29 April 2009, HMRC wrote to IM as follows –

15

"Further to my letter dated 28 April 2009, I have now had the opportunity of looking at the latest information you have provided but unfortunately this offers no new supporting evidence and only duplicates the details you have already supplied..... The position therefore remains unaltered and in accordance with my letter of 29/01/09..... My letter of 15/04/09 also refers and you have until 18 May 2009 to have requested either an independent review of your appeal by HMRC or have made an application directly to the Tribunal Service."

20

13. On 27 May 2009, HMRC wrote to IM stating "further to letters dated 15 and 29 April, your appeal for 2006-07 is now deemed to be determined under Section 54 of the Taxes Management Act 1970 and tax resulting from the amendment contained in my letter dated 29 January has been released for collection".

25

14. IM wrote on 8 December 2012 appealing the amount allegedly owed.

30

15. IM provided evidence to the Tribunal that he and his wife had left to live in the United States of America in April 2009, returning to the United Kingdom in early to mid March 2012. A US residency card noted permanent residency for the period 19 February 2010 until 19 February 2012. IM stated that he had moved addresses many times but had not told HMRC of his change of address.

35

16. HMRC advised that they had written to a number of addresses but had had only one letter returned from the Royal Mail dated 6 July 2010.

Legislation

Taxes Management Act 1970 as amended -

Section 49C HMRC offer review

- 5 (1) Subsections (2) to (6) apply if HMRC notify the appellant of an offer to review the matter in question.
- (2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC's view of the matter in question.
- 10 (3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E.
- (4) If the appellant does not give HMRC such a notification within the acceptance period, HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under section 54(1) for the settlement of the matter.
- 15 (5) The appellant may not give notice under section 54(2) (desire to repudiate or resile from agreement) in a case where subsection (4) applies.
- (6) Subsection (4) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal under section 49H.
- 20 (7) HMRC may not notify the appellant of an offer to review the matter in question (and, accordingly, HMRC shall not be required to conduct a review) if—
- (a) HMRC have already given a notification under this section in relation to the matter in question,
- 25 (b) the appellant has given a notification under section 49B in relation to the matter in question, or
- (c) the appellant has notified the appeal to the tribunal under section 49D.
- (8) In this section “acceptance period” means the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question.
- 30

Section 49D Notifying appeal to the tribunal

- (1) This section applies if notice of appeal has been given to HMRC.
- 35 (2) The appellant may notify the appeal to the tribunal.

(3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question.

(4) Subsections (2) and (3) do not apply in a case where—

5 (a) HMRC have given a notification of their view of the matter in question under section 49B, or

(b) HMRC have given a notification under section 49C in relation to the matter in question.

10 (5) In a case falling within subsection (4)(a) or (b), the appellant may notify the appeal to the tribunal, but only if permitted to do so by section 49G or 49H.

Section 49H Notifying appeal to tribunal after review offered but not accepted

(1) This section applies if—

15 (a) HMRC have offered to review the matter in question (see section 49C), and

(b) the appellant has not accepted the offer.

(2) The appellant may notify the appeal to the tribunal within the acceptance period.

20 (3) But if the acceptance period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.

(4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.

25 (5) In this section “acceptance period” has the same meaning as in section 49C.

The Appellant's Submissions

17. IM says that he was at different addresses and did not initially receive all the correspondence and, when he did, he replied in detail.

30 18. IM says that he was resident in the US or otherwise abroad from 2009 to 2012.

HMRC's Submissions

35 19. HMRC says that IM had not appealed the decision of 15 April 2009, in relation to his SA536 appeal of 5 February 2009, in time by 18 May 2009, being 30 days after the notification of HMRC's view of the matter in question.

20. HMRC say that IM has no reasonable excuse which existed throughout the period and that, in any event, an appeal had to be lodged as soon as the reasonable excuse ended.

5 21. HMRC say that IM only raised an appeal in December 2012 when he was being pursued for payment of the tax.

22. HMRC say that the wording of the letter of 29 April 2009 did not meet the statutory definition of either requesting an internal review or requesting an appeal to the Tribunal.

10 23. HMRC say that the SA536 appeal, of 5 February, was still running and that it had not been postponed; that the appeal of 29 April was a new appeal. HMRC say that the dates shown as received by "Local Compliance" on IM's letters cannot always be relied upon as being accurate.

15 24. HMRC say that the terms of the letter of 29 April 2009 do not amount to "a notification within the acceptance period as contained at Section 49C TMA 1970 relating to HMRC's offer of a review and do not amount to a Notice of Appeal "given to HMRC" in terms of Section 49D of the Taxes Management Act 1970.

Decision

20 25. The Tribunal accepted that the receipt stamps, relied on in part by HMRC, were credible as to the date of receipt of the undated letters and, when read in context, that they had been written about the date of receipt.

26. The Tribunal noted that in HMRC's letter of 15 April 2009 the author refers to a "discussion with IM about the appeal" and the change in the constitution and structure of the appellant body.

25 27. Section 49C(3) requires the Appellant to notify HMRC of acceptance of the offer ("to review") "within the acceptance period".

30 28. Section 49C(4) applies if the Appellant does not give HMRC such a notification within the acceptance period. This provides that HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under Section 54(1) for settlement of the matter.

29. Section 49C(6) provides that subsection 4 does not apply to the matter in question if, or to the extent that, the Appellant notifies the appeal to the Tribunal under Section 49H.

35 30. Section 49H only applies where the Appellant has been offered a review of the matter in question (as per Section 49C) and the Appellant has not accepted the offer. This provides that the Appellant may notify the appeal to the Tribunal within the acceptance period.

31. Section 49D entitled "Notifying an Appeal to the Tribunal" provides at subsection 1 that this section applies if "Notice of Appeal has been given to HMRC".

5 32. Section 49D(2) states "the Appellant *may* (emphasis added) notify the appeal to the Tribunal. So sections 49D(1) and (2) clearly state that Notice of Appeal has to be given to HMRC and the Appellant may notify the appeal to the Tribunal.

10 33. Sections 49D(2) to (4) are disapplied if HMRC has given notification under Section 49C in relation to the matter in question. Section 49D(5), however, states that, in those cases, the Appellant may notify the appeal to the Tribunal but only if permitted to do so by Sections 49G or Section 49H. The relevant section is 49H which applies where HMRC have offered to review the matter in question and the Appellant has not accepted the offer.

15 34. Section 49H applies where an Appellant appeals to the Tribunal after a review has been offered and has not been accepted and subsection (3) allows the Appellant to notify the appeal after the acceptance period has ended if the Tribunal give permission.

20 35. In this case, the review offered by HMRC was neither accepted nor not accepted. Instead, the tax payer wrote "I write to appeal against this enquiry" and this statement was made within the relevant period.

36. The Tribunal considered that the letter of 23 April did not amount to an acceptance of HMRC's offer of a review, as per Section 49C(3), but did amount to an appeal to HMRC under Section 49D(1).

25 37. The issue in this case was the loose language used as whereas IM did not specifically accept the offer, the words used had the effect of not doing so. Section 49D(1) requires HMRC to receive a Notice of Appeal (1) within the acceptance period and IM did notify HMRC but did not notify the Tribunal within the acceptance period.

30 38. HMRC could give no indication why the letter received on 15 April appeared to have been ignored in subsequent correspondence and, in particular, why no further enquiries had been made as to the intentions of IM, particularly as the issue of an appeal had been the subject of a letter on 11 March. It is likely, however, that the letter of 15 April, written by HMRC, may have crossed with the letter which was sent by IM which was only
35 received on 23 April.

39. The Tribunal were given Notice of Appeal in December 2012 by the letter marked as received on 23 April.

40 40. Taking into account the telephone call referred to in HMRC's letter of 15 April and the terms of the letter of 23 April, the Tribunal held in exercise of its authority under Section 49H of the Taxes Management Act 1970, that the

appeal should be allowed in circumstances where a review was offered but not accepted and that notification was made to HMRC within the acceptance period and to the Tribunal after the acceptance period had ended.

41. Accordingly, the substantive appeal should proceed.

5 42. 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.

10

15

**W RUTHVEN GEMMELL, WS
TRIBUNAL JUDGE**

RELEASE DATE: 3 July 2013

20