[2016] UKUT 0235 (TCC)

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Case number: UT JR/2014/003

THE QUEEN on the application of
WHITEFIELDS GOLF CLUB LIMITED
WHITEFIELDS GOLF LIMITED
DRAYCOTE HOTEL LIMITED **Applicant**

-and-

THE FIRST-TIER TRIBUNAL **Respondent**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS **Interested Party**

Tribunal: Judge Colin Bishopp

Sitting in London on 1 February 2016

It is directed that:

1. The applicants, namely Whitefields Golf Club Limited, Whitefields Golf Limited and Draycote Hotel Limited, shall pay the costs of the interested party, summarily assessed at the sum of £5,664.

2. The said costs shall be paid by not later than 29 February 2016.

Colin Bishopp
Upper Tribunal Judge

Release date: 05 February 2016

REASONS FOR DIRECTION

1. On 13 May 2014 the First-tier Tribunal ("the F-tT") released its decision substantially dismissing the applicants' appeals against information notices served on them by the interested party, HMRC, though it directed some amendments to the notices. The applicants did not comply with the information notices as so amended but instead began judicial review proceedings. Shortly thereafter, HMRC issued an assessment against one of the applicants, Draycote Hotel Limited, even though they had not yet received the requested information. At this point the applicants decided that they should provide the requested information since it would be necessary for them to do so in the course of an appeal against the assessment. Such an appeal has since been made to the F-tT. The applicants also recognised that, as they had now disclosed the required information, it would serve no useful purpose to pursue the judicial review proceedings, and they were withdrawn.

2. I should mention for clarity that the respondent in the judicial review proceedings is the F-tT, which in the ordinary way has not participated, whereas HMRC have done so as an interested party.

3. The question now is whether the applicants should pay HMRC's costs of the withdrawn judicial review proceedings. I have been asked to determine the matter on the basis of written submissions alone.

4. HMRC's argument is the simple one that the applicants have put them to expense in responding to judicial review proceedings which the applicants have abandoned and there is no good reason why the normal rule, namely that costs should follow the event, should not apply. Had the application for judicial review remained in the High Court there would have been a deemed order, pursuant to Part 38.6 of the Civil Procedure Rules, to the effect that the applicant should pay their costs. As the Upper Tribunal's judicial review jurisdiction is derived from that of the High Court the same rule should be applied.

5. The applicants' case is more complicated, and requires an explanation of the background for its understanding. The relevant events began in 2004 when HMRC began an enquiry into arrangements between the applicants, with particular reference to their VAT liability. In the course of that enquiry various documents were provided by the applicants to HMRC. The enquiry was not, however, pursued and it seems that HMRC destroyed or mislaid the copy documents with which they had been provided. The enquiry was resumed, or revived, in 2011. HMRC asked the applicants to provide what was substantially, though perhaps not precisely, the material which had already been provided in 2004. It was the applicants' refusal to do so which led to the information notices. The applicants say that their refusal was reasonable because, after seven years of inactivity on HMRC's part, they ought to have been able to conclude that HMRC were satisfied that the applicants were accounting for the relevant transactions correctly. HMRC's approach to the matter, they say, represented an abuse.

6. It was largely on those grounds that the applicants resisted the information notices, and appealed against them to the F-tT. Their appeal was substantially unsuccessful, as I have explained. As there is no statutory route of appeal from a decision of the F-tT relating to an information notice, the applicants' only course, if they wished to challenge the decision, was to bring judicial review proceedings. The fact that HMRC had made an assessment against one of the applicants shows clearly that the information was not in fact necessary at all, and the applicants were justified in bringing those proceedings. The applicants' conduct following the making the assessment, in particular the withdrawal of the judicial review proceedings, was a pragmatic response to the changing situation. It should not, therefore, give rise to an adverse direction in respect of costs.

7. The applicants add the argument that I should not, in any event, make a decision on the costs application until after the appeal currently before the F-tT has been determined. In that

appeal the F-tT will decide whether or not the assessment was justified, a factor which is relevant to the reasonableness of the parties' conduct in relation to the information notices.

8. HMRC's response to the first point is that they made the assessment when they did because of the impending expiry of the time limit. It was simply a protective measure. Had the applicants disclosed the requested information earlier, the assessment would no doubt have been made earlier as well. HMRC have not specifically commented on the applicants' argument that a decision should be deferred until after the conclusion of the appeal before the F-tT.

9. In my judgment the fact that there is an outstanding appeal before the F-tT against the assessment is an irrelevant consideration. The question which arises for consideration in that appeal is not whether HMRC were justified in asking for the information, but whether or not they were justified in making the assessment. That appeal is not the forum for deciding whether or not HMRC's request for information was oppressive, or whether or not the applicants were justified for some other reason in resisting it. That was the issue before this tribunal in the judicial review proceedings.

10. Accordingly I see no basis on which I should defer a decision on HMRC's application. I also see no basis on which I should refuse it; the ordinary rule in this tribunal, as in the High Court, is that costs should follow the event. Even though the Civil Procedure Rules do not apply in this tribunal, they are persuasive of the practice to be adopted, in particular where the High Court and the Upper Tribunal have concurrent jurisdiction. Nothing said by the applicants persuades me that I should not make a direction in accordance with the ordinary practice. The applicants accept that the amount requested by HMRC, namely £5,664, is not unreasonable and I accordingly assess the costs payable, summarily, at that amount.

Colin Bishopp
Upper Tribunal Judge

Release date: 05 February 2016