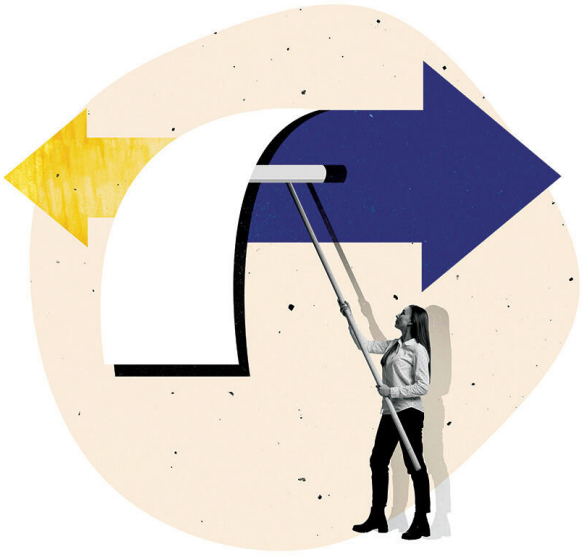
The case of HMRC v Yaxley: the power of a single word

Personal tax



18 February 2025

We consider a case where a taxpayer tried to revise her own Self Assessment return, which rested upon whether her request should have been to amend or appeal.

Key Points

What is the issue?

The complexities and uncertainties surrounding the Self Assessment rules in the UK tax system are highlighted by a case where a taxpayer, Mrs Yaxley, attempted to revise her Self Assessment return. The case highlights the importance of using precise language in tax-related communications.

What does it mean for me?

HMRC calculated Mrs Yaxley's tax liability, but the case of *Silver v HMRC* later revealed that its interpretation understated the relief available. Mrs Yaxley attempted to correct her tax calculation by writing to HMRC but her request was not resolved before the amendment period expired. Consequently, she appealed to the First-tier Tribunal.

What can I take away?

Taxpayers should use precise language when dealing with HMRC. If revising a Self Assessment return, they should request an 'amendment'; and only use 'appeal' when there is an appealable decision. This aims to prevent misunderstandings and ensure that taxpayers' intentions are clear to HMRC.

The Self Assessment rules are prescriptive. Presumably, the main reason for this is to ensure that a taxpayer's duties and HMRC's powers are clearly defined. However, 30 years after the rules were first enacted, uncertainties remain. The latest case to consider these rules is *Sarah Yaxley v HMRC* [2025] UKFTT 51 (TC).

The facts of the case

The case concerns Mrs Yaxley's 2018 tax return. This was submitted on paper on 23 August 2018. Within the return, Mrs Yaxley had identified a chargeable event which qualified for top slicing relief under the rules in the Income Tax (Trading and Other Income) Act 2005 s 535.

As Mrs Yaxley's return was on paper, and on time, Mrs Yaxley invited HMRC to calculate the tax liability for the year, which it duly did. In doing so, the top slicing relief given to Mrs Yaxley was £8,778.80.

However, what Mrs Yaxley did not know at the time was the fact that HMRC's method for calculating top slicing relief was being challenged in the tribunals. On 18 April 2019, the First-tier Tribunal released its decision in *Silver v HMRC* [2019] UKFTT 263 (TC). That decision showed that HMRC's interpretation of the rules was incorrect and, in some cases, understated the amount of relief available to taxpayers. HMRC subsequently appealed against the First-tier Tribunal's decision to the Upper Tribunal but abandoned the appeal on the day that it was due to submit its skeleton argument (14 days before the scheduled hearing date the following March). Having

been advising Mrs Silver, it is certainly my opinion that HMRC had no intention of pursuing the case and merely kept it alive for as long as possible for tactical reasons.

In the meantime, Mrs Yaxley (now aware of the *Silver* case) decided that she wanted to take advantage of the methodology that the First-tier Tribunal had approved in the *Silver* case, rather than that applied by HMRC. By a letter dated 15 August 2019, Mrs Yaxley sent in what she believed to be the correct calculation, asked HMRC to explain its calculation and, in the meantime, asked HMRC to accept her letter as an appeal against its preferred calculation. Ten days later, Mrs Yaxley wrote again to HMRC and supplied the detailed calculations she believed to be correct and asked HMRC that the detailed calculations be used to support her appeal.

Six months later, on 11 February 2020, HMRC replied. It explained that legislative changes following the introduction of the nil savings rate in 2016 had led to 'ongoing issues … [which] have made the calculation of liability much more complicated'. Nevertheless, HMRC stated that the calculation of relief of £8,778.80 was in accordance with its then current interpretation of the law. (It was only four weeks later that it threw in the towel in the *Silver* case, so it is of course possible that HMRC already knew that its position was untenable. However, as at 11 February 2020, it was still HMCR's official policy that the *Silver* case had been wrongly decided.)

However, what was more critical in Mrs Yaxley's case is what had happened 11 days before the February letter. On 31 January 2020, the period for Mrs Yaxley to amend her 2018 tax return expired.

As correspondence with HMRC was not resolving the issue, it appears that Mrs Yaxley then notified her appeal to the First-tier Tribunal in late 2023 or early 2024. HMRC responded by saying that the tribunal did not have jurisdiction to hear the appeal and asked it to strike out the appeal. The tribunal's decision in respect of this strike-out application is the subject of this article.

The First-tier Tribunal's decision

The case came before Tribunal Judge Michael Blackwell.

The judge noted that Mrs Yaxley had effectively delegated the task of calculating her tax liability to HMRC (as she was entitled to do under the Taxes Management Act (TMA) 1970 s 9(3)). However, as provided for by s 9(3A), HMRC's calculation is still to be treated as the taxpayer's 'self' assessment.

Accordingly, the right of appeal conferred on taxpayers by TMA 1970 s 31 is excluded because (so far as is relevant to this case) it provides a right to appeal only against 'any assessment to tax which is not a self-assessment'.

In short, Mrs Yaxley could not validly appeal against the HMRC calculations of her tax liability for the year. As the tribunal's jurisdiction is itself dependent on there being a valid notice of appeal (TMA 1970 ss 48(1)(b) and 49A), the judge was forced to agree with HMRC that the tribunal had no jurisdiction to consider Mrs Yaxley's case. That fact then engaged rule 8(2)(a) of the tribunal's procedure rules, which requires the tribunal to strike out any case where it does not have jurisdiction.

For these reasons, Mrs Yaxley's appeal was struck out.

Commentary

It is notable that the judge ended his decision by identifying a number of reasons why he thought HMRC's conduct in this case was unhelpful, concluding 'it is not how one would hope to see HMRC treat a customer'. For example, he noted that the purported appeal in August 2019 was not responded to with the helpful suggestion that Mrs Yaxley ask HMRC to amend her Self Assessment (and that when it did respond six months later, it was just after the time limit for such an amendment had expired). The judge also regretted the fact that HMRC had failed to acknowledge that Mrs Yaxley's preferred computation was clearly tenable and, indeed, by then had been given the approval of the First-tier Tribunal.

From my experience in other cases, HMRC considers itself able to disregard decisions of the First-tier Tribunal, as they do not constitute binding precedent. However, from my perspective, the concept of binding precedent is irrelevant in this regard. The principle means, I believe, merely that the First-tier Tribunal cannot bind itself and that parties are free to re-argue points that have been decided the other way. However, I do not think that HMRC has the right simply to disregard a decision of the First-tier Tribunal simply because it does not accord with the department's

thinking, even if the point is being taken to the Upper Tribunal or beyond. As I have already noted, I do not believe that HMRC mounted any serious challenge to the *Silver* decision and I take the view that its appeal to the Upper Tribunal was for presentation purposes.

It should also be noted that when HMRC has won a point in the First-tier Tribunal, it is very keen to argue that the principle of 'judicial comity' means that the First-tier Tribunal should be very slow to depart from that earlier decision, even if it is not strictly binding. This inconsistent approach to First-tier Tribunal decisions is, in my view, rather unfortunate given that HMRC is a public body which, one might have thought, should adhere to higher standards than from private bodies or individuals (see the *obiter* comment of Lord Neuberger in *HMRC v BPP Holdings Ltd* [2017] UKSC 55 – a case discussed in my article 'Paper tiger or hidden dragon?' in the October 2017 issue of *Tax Adviser*).

On the subject of broader principles, it should also be remembered what the Supreme Court had said in *HMRC v Tower MCashback LLP 1* [2011] UKSC 19: 'There is a venerable principle of tax law to the general effect that there is a public interest in taxpayers paying the correct amount of tax.'

In *Yaxley*, a taxpayer had expressed dissatisfaction with one aspect of her Self Assessment return, notified HMRC that she considered it to be wrong, and made it clear what she believed to be the right figures. Furthermore, Mrs Yaxley's figures did actually give 'the correct amount of tax' (and were in accordance with what was then recent case law of which HMRC were aware).

Even more importantly, Mrs Yaxley's communications in August 2019 were sent to HMRC at a time when, had she used the word 'amend' rather than the word 'appeal', HMRC would have been obliged to adopt Mrs Yaxley's figures. (If HMRC had wished to maintain its view that the *Silver* case had been wrongly decided, it should have opened an enquiry into the amended return. If, on concluding that enquiry, HMRC wanted to restore the original (i.e. wrong figures), Mrs Yaxley would have had an unfettered right to pursue her appeal and she would almost certainly have won her case.)

In other words, all that Mrs Yaxley did wrong was to use the wrong word in her correspondence with HMRC. But what's in a name? That which we call an amendment by any other name should surely smell as sweet, when what Mrs Yaxley

wanted was clear. Indeed, HMRC had not made any appealable decision against which Mrs Yaxley could appeal (as HMRC correctly submitted to the tribunal), so it is not a case where the use of the wrong word meant that Mrs Yaxley had embarked upon a journey that led to a dead-end.

In the circumstances of the case, Mrs Yaxley's letter could have meant only one thing, being that she was no longer content with the figures in her tax return and that she had alternative figures that she wished to use.

It is also interesting to contrast HMRC's conduct in this case with its approach to cases where an appeal is possible. In its Appeals, Reviews and Tribunals Guidance, HMRC acknowledges that taxpayers do not have to use the word 'appeal' in order to commence an appeal. An officer should interpret taxpayers' correspondence sensibly and, whenever a challenge is made to an appealable decision, it should be treated as an appeal even if the word 'appeal' is not used. By the same token, one might have thought that a taxpayer's letter challenging an amendable calculation should be taken as a request for an amendment, even if the word 'amend' is not used.

What is not clear from the decision is whether Mrs Yaxley has the desire to take the case further. It would certainly be pointless to ask for permission to appeal because the judge's decision is clearly unimpeachable. However, Mrs Yaxley should consider making a formal complaint or starting the process for judicial review. Judicial review is notoriously expensive but judicial review claims should be started with a pre-action letter to HMRC; i.e. before court costs are incurred. The purpose of that letter is to give HMRC an opportunity to change its mind before legal costs are incurred. (I am conscious that judicial review claims are subject to strict time limits but, in my view, this is one of those cases where a court should readily waive them.)

Armed with the fact that HMRC had chosen not to treat Mrs Yaxley's correspondence as a timely request for an amendment (which was the only legal step that Mrs Yaxley could have taken at the time), the further fact that Mrs Yaxley's amendment would have led to the correct amount of tax being payable (and therefore accorded with the venerable principle) and the fact that HMRC then left it until after the time limit for amendments before responding to Mrs Yaxley, one would like to think that HMRC would not be slow to do the right thing in this case if given a further chance. It is therefore to be hoped that the clouds identified in this case will eventually have a *Silver* lining.

What to do next

To avoid the rollercoaster that Mrs Yaxley has had to endure, the safest course of action is to ensure that the correct words are used. Therefore, the following steps should be taken:

- If a taxpayer wants to revise a Self Assessment return (even in cases where some of the figures used have been inserted by HMRC), the taxpayer should ask to ‘amend’ the return and identify the figures to be used instead.
- If a taxpayer is unhappy with amendments made by HMRC to a Self Assessment return in cases where there has been no enquiry, then the taxpayer should ‘reject’ the amendments.
- It is only in cases where the amendments have been made by HMRC in the course of an enquiry (or where there is another appealable decision) that the taxpayer should ask to ‘appeal’.