



**TC06680**

**Appeal number: TC/2017/07291**

*Procedure – appealable decision – no – strike out application granted*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DAVID McKENZIE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE SCOTT**

**Sitting in public at Kings Court, Royal Quays, Earl Grey Way, North Shields on  
14 August 2018**

**Mr J Richardson, for the Appellant**

**Mrs R Oliver, Officer of HMRC, for the Respondents**

## DECISION

5 1. This was a hearing in relation to the respondents' ("HMRC") application dated 27 November 2017 and treated as an application for strike out in Directions issued by me on 16 January 2018.

2. This appellant had lodged an appeal with the Tribunal under reference TC/2014/05717 against Discovery Assessments for 2010/11 issued on 11 June 2015 and for 2012/13 issued on 13 August 2014.

10 3. That appeal and this appeal were listed to be heard together and this application was heard as a preliminary matter before the finalisation of the adjourned substantive appeal.

15 4. In an undated letter sent to HMRC, at some point after 17 December 2015, the appellant sought overpayment relief for the year 2010/11 in the sum of £1,384.20 and for 2012/13 in the sum of £886.71.

5. At that juncture the appellant had been engaged with HMRC in Alternative Dispute Resolution. That claim was neither refused or admitted.

20 6. Schedule 1AB Taxes Management Act 1970 ("TMA") provides at paragraph 2(3) that HMRC are not liable to give effect to a claim where "The claimant is or will be able to seek relief by taking other steps under the Income Tax Acts ...".

7. Since the appeals were live at the point at which the claim was intimated, Section 36(1) and (3) TMA come into play. They read as follows:-

25 "36(1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).

30 36(3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made in a case mentioned in subsection (1) or (1A) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by the Taxes Acts."

8. In this case it is not disputed that the Discovery Assessments had been raised on the basis that the appellant had been careless. Section 36(3) TMA provides an opportunity to make, amend or withdraw a claim for the years in question. Accordingly the claims made for the appellant fall within Section 36(3) TMA and thus form part of the ongoing appeals against the Discovery Assessments.

9. In those circumstances, given the background, there is no appealable decision in this appeal and the appeal falls to be struck out.

10. 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.

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**ANNE SCOTT  
TRIBUNAL JUDGE**

**RELEASE DATE: 24 AUGUST 2018**

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